Infusing Dispute Resolution Teaching and Training with Culture & Diversity

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To teach someone, I must know who I am.
To teach someone, I must know who the other is.
To teach someone, I must be able to bridge the gap between myself and the other.[2]

I. INTRODUCTION

LeBaron and Patera have questioned why negotiation trainers have been slow to respond to new ideas. They surmised that the reasons might include a "preference for prescriptive approaches reducible to repeatable modules." Their solution is to provide culturally fluent negotiation education which would feature a series of tools and processes applicable to different ways of being, seeing, and responding to issues and diverse others. However, they pointed out that these tools are not easily packaged in prescriptive modules but must be flexible, intuitive, drawing on the trainees' perceptions, identities and worldviews.[3]

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[2] COLLEGE NURSES OF ONTARIO, *Culturally Sensitive Care, in* PRACTICE GUIDELINE 3, 3 (College Nurses of Ontario ed., 2009) (quoting Jean Watson).

[3] Michelle LeBaron & Mario Patera, *Reflective Practice in the New Millennium, in* RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE 45, 48-49 (DRI Press ed., (2009)). The authors suggest that the current approaches to negotiation training privilege: (a) explicit communication and direct confrontation; (2) individualist perspectives on agency and autonomy; (3) competitive assumptions that people will act to maximize individual gains, and can be assisted to extend this behaviour to maximizing joint gains if their own interests are not compromised; (4) Action-orientation at the expense of focus on 'being' or inaction; (5) analytic problem-solving; (6) sequential orientation to time; (7) universalist ideas about the international applicability of 'interest-based' negotiation; and (8) agreement as a central measure of success.

Mayer concluded that human needs are the center of all disputes or conflicts and those five basic needs are communication, emotions, values, history and the structures within which interactions take place.[4] Concepts of culture include four of those basic needs (communication, emotions, values and history). In other words, disputes or conflicts are intertwined with culture.[5] Therefore, knowledge of culture is essential to assisting parties to arrive at settlements of disputes. This paper will look within dispute resolution and other disciplines to discuss *how and why* culture should be included in all subjects in the curriculum, but this paper will not discuss specific content of the curriculum.

To facilitate the discussion of the place of culture in teaching dispute resolution this paper is organized as follows: Part II will give a brief overview of the Euro-American litigation culture that eventually prompted the need for alternative dispute resolution processes. Part III will review the history of dispute resolution from its origins in Africa and its introduction to North America. It will also review the development of the dispute resolution scholarship in North America. Part IV will review the literature and explore different descriptions of culture to arrive at a working definition for this paper. Part V will propose a neuroscientific argument for the inclusion of culture in dispute resolution training by discussing stereotype and trust between trainer and learner. Part VI will explore ways of teaching across different cultures including, a discussion of values, value orientations, power distance, cultural competence, cross-cultural competence and mindfulness. Portions of definitions will be embraced, and other concepts introduced to suggest a working proposition of how the integration of difference can result in more effective teachers and students of dispute resolution practices. Part VII will introduce teaching methods and learning styles and link them to the neuroscientific argument to explain why it is important to imbue teaching and training in dispute resolution with culture and diversity both locally and globally.

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[4] BERNARD MAYER, THE DYNAMICS OF CONFLICT RESOLUTION: A PRACTITIONER'S GUIDE, 8-9 (Jossey-Bass, 2000).

[5] Thomas A. Regulus & Kimberley Leonaitis, *Conflict, Violence, and Cultural Diversity*, 19 UPDATE ON L. RELATED EDUC. 41 (1995) ("Culture is a set of values, beliefs, and expected behaviours that guides the lives of a group's members. It provides meaning and purpose, and organizes lives and experiences. Cultures develop as a means of solving problems that groups experience over time, and cultures are different because their problems and experiences have been different").

II. PRE-DISPUTE RESOLUTION IN ANGLO-AMERICA

Disputes are as old as time. For centuries, North American societies with their roots in Great Britain[6] have relied on the "rule of law"[7] to govern its peoples and determine the outcome of disputes. Social commentators have suggested that although law may be the leading "adversarial" institution, much in Anglo-American culture is based also on adversarial argument, from the media to politics to education to gender relations.[8] It is not surprising then that our public and legal discourse became infused with conflict, pugilistic and militaristic terminology. Naomi Mezey theorized that, based on Anglo-American culture and law which are mutually constituted, there is a legal culture in the United States (and, I would argue, in Canada). She concluded that legal and cultural meanings are produced at the intersection of the two domains (law and culture) which she argues are only fictionally distinct.[9]

Litigation in Anglo-American legal culture became another battleground with militaristic vocabulary. Metaphorically, claims are filed and defended; strategies are developed and countered; arguments are mounted and demolished; and, most important, there are winners and losers. The very language of litigation invites conflict and eschews settlement. Overseeing this legal culture are the lawyers whose dominant values and beliefs, nurtured in law schools, determine their behaviour in practice. "The populist adversarial stereotype of lawyers focuses on behaviours: aggressive argument, positional bargaining, formalistic rituals, procedures and a single strategy (to win)."[10] Tannen opined that this perspective limits our imagination when we consider what we can do about situations we would like to understand or change.[11] For the general public, entering into the maze of legislation, case law, court rules, levels of court and the associated expense is not for the faint of heart.

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[6] This paper will refer to Anglo-American, Eurocentric or Western culture to indicate the dominant cultures of the United States, Canada, England and most of Western Europe. This is not to suggest a uniformity of cultures in these nations but to connote some root or similarity in the worldview of their cultures.

[7] "Rule of law" refers to substantive, procedural or codified rules, legislation, and precedents—all connoting a unifying commonality to the society.

[8] Carrie Menkel-Meadow, *From Legal Disputes to Conflict Resolution and Human Problem*

Solving: Legal Dispute Resolution in a Multidisciplinary Context, 54 J. LEGAL EDUC. 7, 17 (2004).

[9] Naomi Mezey, *Law as Culture*, 13 YALE J. L. & HUMAN. 35, 57 (2001).

[10] *See generally* JULIE MACFARLANE, THE NEW LAWYER: HOW SETTLEMENT IS TRANSFORMING THE PRACTICE OF LAW, 29 (UBC Press ed., 2008).

[11] D. TANNEN, THE ARGUMENT CULTURE, 7-8 (Random House ed.,1998); *see also* G. LAKOFF AND M. JOHNSON, METAPHORS WE LIVE BY, 4-5 (University of Chicago Press ed., 1980).

These conditions have made the legal system ripe for the introduction of other dispute resolution mechanisms and Macfarlane reports that some lawyers became actively engaged in reshaping their "warrior" mentality to change their cultural image and bring "peace and resolution" rather than fight protracted court battles."[12]

To further complicate the matter, the normalization of international travel, commerce and scholarship have resulted in inter and intra-cultural disputes. It is not difficult, therefore, to understand why alternative methods of settling disputes are gaining traction internationally. This paper posits that with the multiplicity of ethnic and cultural groups in the world[13] and even with the diversity within a city like Toronto[14], cultural differences and inter- and intra-cultural conflicts should make culture and diversity training an integral part of dispute resolution teaching.[15]

III. THE DEVELOPMENT OF DISPUTE RESOLUTION IN NORTH AMERICA

The first published article on what was to become alternate dispute resolution in North America was authored by anthropologist, James Gibbs, on his fieldwork among the Kpelle people in Liberia, Africa, between 1957 and 1958. He noted that Africans had highly developed law and legal procedures but also had informal, quasi-legal dispute-settlement procedures supplemental to formal ones. Among the Kpelle, the informal dispute settlement process was called a moot. This differed in tone and effectiveness from the formal courts. Gibbs found that the effectiveness of the moot was based on a "covert application of principles of psychoanalytic theory which underlie

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[12] MACFARLANE, *supra* note 9, at 25-46.

[13] FRED E. JANDT, AN INTRODUCTION TO INTERCULTURAL COMMUNICATION: IDENTITIES IN A GLOBAL COMMUNITY, 12 (7th ed. 2013). According to some estimates, there are 5,000 ethnic groups in the world. "*Ethnic group*" refers to people of the same descent and heritage who share a common and distinctive culture passed on through generations.

[14] 2017 National Housing Survey from the 2016 Census reveals that Toronto's 2.73 million population is made up of 230 ethnic groups; 51.5 percent identified as visible minorities; 51.5 percent were born outside Canada, https://www.toronto.ca/wp-content/uploads/2017/12/8ca4-5.-2016-Census-Backgrounder-Immigration-Ethnicity-Housing-Aboriginal.pdf

[15] For ease of reference, I will use the terms "alternate dispute resolution," "dispute resolution," "conflict resolution," "mediation," "DR," and "ADR" interchangeably to mean a process to settle disputes without resorting to the formal judicial system. I will also use the terms "teaching," "training," and "coaching" to mean the imparting of knowledge to others in some formalized manner.

psychotherapy." He found that the Kpelle courtroom was basically coercive and arbitrary in tone and was, therefore, inept in settling matrimonial disputes because the harsh tone did not reconcile spouses. Gibbs described the Kpelle moot as "an informal airing of a dispute which takes place before an assembled group of kinsmen of the litigants and neighbours" and is usually held at the home of the complainant. The complainant chooses the mediator who is usually a chief or elder.[16]

Gibbs observed that moots had several marked characteristics: (1) they take place soon after the breach has taken place; (2) they take place in a home or familiar surroundings; (3) the whole community can attend and offer input; (4) the parties control the airing of grievances and nothing mentioned is irrelevant; (5) the solution is consensual; (6) the mediator has no political authority to impose punishment; (7) sanctions are not designed to cause hardship; and (8) there is a ritualized offering and acceptance of tokens of apology which indicate both parties are satisfied with the settlement.[17]

What was important about the Kpelle moot was Gibbs' observation that the moot was analogous to psychotherapy:

> The moot . . . is particularly effective in bringing about reconciliations between spouses. This is because the moot is not only conciliatory, but therapeutic. Moot procedures are therapeutic in that, like psychotherapy, they re-educate the parties through a type of social learning brought about in a specially structured inter-personal setting . . . Therapy involves four elements: support, permissiveness, denial of reciprocity, and manipulation of rewards . . . The same elements characterize not only individual psychotherapy, but group psychotherapy as well.[18]

Gibbs also analogized the mediator's role using a psychoanalytic framework. He noted that, for the mediator to do his job well, he must be a member of two social systems—one containing himself and the parties, and the other, society at large. He must use his position as a member of the group to "manipulate the parties into living up to the normative requirements of the wider society" but his major orientation must be towards the wider society.[19]

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[16] James L. Gibbs, Jr., *The Kpelle Moot: A Therapeutic Model for the Informal Settlement of Disputes*, 33 AFR. J. INT'L INST. 1, 1-3 (1963).

[17] *Id.* at 5.

[18] *Id.* at 6.

[19] *Id.* at 9.

Given the pugilistic state of the North American judicial system, it is not difficult to understand how the moot would be beneficial as an alternate dispute settlement process to provide greater access to justice. Using Gibbs' article as a guide, Danzig and Lowy (whose thesis concentrated on dispute resolution in Ghana) proposed using these models to develop community moots across America.[20]

From the beginning, issues of "culture"—superiority/inferiority, poor/rich, modern/ancient, avoidance/cooperation, simple/complex—came to the fore. As an early sceptic, Felstiner was of the view that the Kpelle moot could not be transplanted from "technologically simple poor societies" like Liberia and Ghana to "technologically complex rich societies" like America.[21] He argued that the mediator's authority of a chief of elder in a community with strong shared values and a high cost of avoiding conflict resolution could not be transplanted to urbanized America where social relations are diffuse.[22] Merry, calling the moot the "anthropological prototype" postulated that it would not be adaptable in "heterogeneous, transient, anonymous, and morally diverse" American cities.[23]

By the mid-1970s, out of the frustration with a pugilistic and expensive judicial system, North Americans began to embrace negotiation and conflict resolution courses. Gradually, ADR became a part of the North American vernacular with lawyers, economists, social workers, anthropologists, business people, cognitive psychologists, and other disciplines practising, teaching and writing in the area. As Menkel-Meadow indicated, "by the early 1980s we had a field, at least of teaching, and with some scholarship developing."[24] Facilitators were finding ways to improve

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[20] Richard Danzig, *Toward the Creation of a Complementary, Decentralized System of Criminal Justice*, 26 STAN. L. REV. 3, 41-48 (1973); Michael J. Lowy, *Modernizing the American Legal System: An Example of the Peaceful Use of Anthropology*, 32 HUM. ORG. 2 (1973); Richard Danzig & Michael J. Lowy, *Everyday Dispute and Mediation in the United States: A Reply to Professor Felstiner*, 9 L. & SOC'Y REV. 217, 675-694 (1975).

[21] William Felstiner, *Influence of Social Organization on Dispute Processing*, 9 L. & SOC'Y REV. 217, 63-89 (1974). *See also* William Felstiner, *Avoidance as Dispute Processing: An Elaboration*, 9 L. & SOC'Y REV. 4 (1975).

[22] *Id.*

[23] Sally Engle Merry, *The Social Organization of Mediation in Nonindustrial Societies: Implications for Informal Community Justice in America*, *in* THE POLITICS OF INFORMAL JUSTICE, VOL. 2, (Richard Abel ed.,1982). Years later, Merry indicated that community justice institutions in the United States were originally modeled on prototypes from Africa, Mexico and Asia. Sally E. Merry, *Anthropology, Law and Transnational Processes*, 21 ANN. REV. OF ANTHROPOLOGY (1992).

[24] Carrie Menkel-Meadow, *Introduction: What Will We Do When Adjudication Ends: A Brief Intellectual History of ADR*, 44 UCLA L. REV. 1613 (1997).

communication between parties or help them discover their underlying needs and interests, neutral evaluators were making analyses of claims, mediators were engaged where long-term relationships had to be preserved, arbitrators for quick resolution of contested disputes, and court mediation programs were being developed. Fisher and Ury published their wildly popular book on principled or interest-based negotiation emphasizing joint gains by being "hard on the merits" and "soft on the people."[25] It is interesting to note that culture is not mentioned at all in the first edition and only covers parts of two of the 200 pages in the second edition.[26] Felstiner wrote about his theory on how the decision is made to convert an injury into a lawsuit (naming, blaming and claiming).[27] Without mentioning all the articles, papers and books along the way, what did become clear is that scholarship was being advanced in the North American ADR field exploring developments in theory and practice.[28] The emerging field of dispute processing or conflict resolution attempted to create, define, and implement institutions and processes of procedural justice and courses were designed on how dispute resolution should be taught. Menkel-Meadow's research found that "disputes" were about legal cases, thereby designating the development of the key concepts of "disputes" and "dispute resolution" as part of the legal field.[29] On the other hand, since "conflicts" were more broadly and deeply about human relations and transactions, "conflicts" and "conflict resolution" were designated social sciences (anthropology, political science, international relations, sociology, psychology, history, economics, and game theory).[30] In the end, she asserts that the socio-legal focus on disputing processes de-centers but does not eliminate law as the primary variable explaining how disputes are resolved.[31] The importance of arriving at solutions that preserved ongoing relationships

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[25] ROGER FISHER & WILLIAM URY, GETTING TO YES: NEGOTIATION AGREEMENT WITHOUT GIVING IN (Houghton Mifflin, 1981).

[26] Kevin Avruch, *Culture and Negotiation Pedagogy*,14(4) NEGOT. J. 339 (2000).

[27] William L. F. Felstiner et al., *The Emergence and Transformation of Disputes: Naming, Blaming and Claiming*, 15 L. & SOC'Y REV. 631 (1981).

[28] Mark Davidheiser, *Race, Worldviews, and Conflict Mediation: Black and White Styles of Conflict Revisited*, 33 PEACE & CHANGE 60, 61-62.2 (2008) ("The predominant training procedures emphasized that there was a proper way to mediate which entailed following a unilinear staged model with specific ground rules ... [Mediators were] trained in a structured problem-solving model, derived in large measure from principled or integrative negotiation which did not account for sociocultural diversity... Within that framework, mediators are called to be impartial facilitators who use a structured process model to create an opportunity for productive communication and problem solving").

[29] *Id.*

[30] *Id.*

[31] Menkel-Meadow, *supra* note 7, at 11-12.

was recognized by theorists such as Fuller[32] and mediation became subjected to taxonomies and typologies. Pure mediators became "facilitators" of human communication, negotiation techniques but never decide anything for the parties (therapeutic); "evaluators' of parties" claims and the likely legal outcome; or "reality testers."[33] Sounding remarkably like Gibbs' description of the Kpelle moot, Menkel-Meadow, legal professor and one of the leading American DR teachers, described mediation as having "the power to create relationships, rules, agreements, and plans for the future (unlike the backward focus of most court decisions)."[34]

Having adopted identifiable elements of the Kpelle moot and adapted it to North America, the push began to export the North American ADR theories and practices to places like the former Soviet Union, Eastern Europe, the Caribbean, Africa and other "developing countries." Some practitioners and scholars took up the challenge. Menkel-Meadow at first resisted the urge to export ADR, for fear that the "talking cure" could be viewed as imperialism and colonialism and "even good intentions can harm those presumed to be beneficiaries of knowledge transfer." Menkel-Meadow indicates that she has now changed her mind because she has developed a deeper understanding of culture and she now appreciates that "when asked 'in' to another legal system or culture by someone who knows what they are interested in (and also understands what the outside consultant brings), the learning is always two-way."[35]

Crampton, a mediator with a background in anthropology, articulated concern that in North American ADR, "culture and social practice are mostly discussed as objects that can be manipulated by experts rather than a complex interaction of norms, values, and philosophies embedded within everyday behavior."[36] Avruch expressed the same concern that culture in negotiation "is *reduced* or turned into an example or label, a handy name for persons aggregated in some social, often national, sometimes ethnic group—and used to distinguish this group from other aggregates; and *essentialized*, shorn of all processual or emergent qualities, made unitary and freed from inner

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[32] Lon L. Fuller, *The Forms and Limits of Adjudication*, 92 HARV. L. REV. 353 (1978).

[33] *Id.*

[34] Menkel-Meadow, *supra* note 23, at 24.

[35] Carrie Menkel-Meadow, *Exporting and Importing ADR: I've Looked at Life From Both Sides Now*, 12 DISP. RESOL. MAG. 5-8 (2005).

[36] Alexandra Crampton, *Addressing Questions of Culture and Power in the Globalization of ADR: Lessons from African Influence on American Mediation*, 27 HAMLINE J. PUB. L. & POL'Y 229, 236 (2005).

dissensions: reified, homogenized, and frozen spuriously in synchronic stasis."[37]

The complexity and importance of culture in dispute resolution education cannot be over-emphasized. The possibility for misunderstanding and psychological harm to local and international learners is immense. This necessitates the devotion of the next section of this paper to an in-depth examination of culture.

IV. WHAT IS "CULTURE"?

Culture is one of the two or three most complicated words in the English language[38]

A. *Towards a Definition of Culture*

Perhaps the best way to develop a definition of culture is to take Avruch's approach and start by outlining what it is **not**:

1. *Culture is homogeneous*: This presumes that cultures are free of dissensions, of internal contradictions or paradoxes such that culture provides unambiguous behavioral instructions for individuals.
2. *Culture is a thing:* Reified, culture is presumed to act independent of individual agency.... Cultures 'clash' with one another across geopolitical landscapes....
3. *Culture is uniformly distributed among members of a group.* This inadequate idea is what makes nominalizing culture—turning it into a label—possible. Like "national character," it fits the requirements of work that stresses the "national negotiating styles" approach. Intra-cultural variations, if ever noticed, whether at the individual or group level, are dismissed as "deviance."
4. *An individual possesses but a single culture.* Usually the "culture" here is national or ethnic. The individual is simply and monolithically Mexican, etc. Once again, the effect is to make culture a synonym for group identity. When predominantly identified with national or ethnic groupings, moreover, this inadequacy makes it more

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[37] Avruch, *supra* note 25, at 340.

[38] RAYMOND WILLIAMS, KEYWORDS: A VOCABULARY OF CULTURE AND SOCIETY, 87 (Fontana Press, 1976, rev. 1983).

> difficult for researchers to think productively about other "vessels" filled by cultural content: professions or occupations, or organizations and institutions.... It also tends to "freeze" culture in a single sociological category, at the expense of recognizing situational or contextual factors—think of the boundary roles' or negotiating definitions of the situation, that could benefit from a nuanced cultural perspective.
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> 5. *Culture is custom.* Here, culture is virtually synonymous with "tradition," customary ways of behaving. It is thus reduced to a sort of surface-level etiquette. Cultural variation becomes ... merely a matter of "differential etiquette."
> 6. *Culture is timeless.* A changeless quality is imputed to culture, especially to so-called traditional cultures.[39]

If nothing else is said about "culture," it should be that it is a complicated word with several meanings which can provoke "hostility or embarrassment."[40] Williams explained that the difficulty in defining culture is partly because of its intricate historical development in several European languages, but mainly because it has now come to be used for important concepts in several distinct intellectual disciplines and in several distinct and incompatible systems of thought.[41] Part of the problem is what Herder called "European subjugation and domination of the four quarters of the globe" and the very thought of a superior European culture being a "blatant insult to the majesty of Nature." Herder argued that we should speak of 'cultures' in the plural: the specific and variable cultures of different nations and periods, but also the specific and variable cultures of social and economic groups within a nation.[42] After mapping how the meaning of culture has changed over time, Williams indicates culture came to mean, "a whole way of life, material, intellectual and spiritual" and what he came to see from the history and structure of culture is "a wide and general movement in thought and feeling."[43]

Williams tried again to define culture and identified three categories in the definition: state of process, documentary, and social culture which he

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[39] Avruch, *supra* note 25, at 341.

[40] RAYMOND WILLIAMS, CULTURE & SOCIETY: 1780-1950, xvi (Columbia University Press ed., 1958).

[41] WILLIAMS, *supra* note 37, at 87.

[42] *Ibid* quoting JOHANN GOTTFRIED VON HERDER, OUTLINES ON THE PHILOSOPHY OF THE HISTORY OF MANKIND 89 (T. Churchill trans., 1784) (1800).

[43] WILLIAMS, *supra* note 37, at xvii.

described as "a description of a particular way of life, which expresses certain meanings and values not only in art and learning but also in institutions and ordinary behaviour."[44] He points out that the analysis of culture from this definition is the clarification of the meanings and values implicit and explicit in a particular way of life, a particular culture.[45] Such analysis will include the historical criticism, elements on the way of life, the organization of production, the structure of the family, the structure of institutions which express or govern social relationships, and the characteristic forms through which members of the society communicate.[46] He concluded that culture is our name for the process and result of "the essential relation, the true interaction, between patterns learned and created in the mind and patterns communicated and made active in relationships, conventions and institutions."[47]

Geertz pointed out that the major reason why anthropologists have shied away from cultural particularities when it came to a question of defining man and have taken refuge instead in bloodless universals is that, faced as they are with the enormous variation in human behavior, they are haunted by a fear of historicism, of becoming lost in a whirl of cultural relativism so convulsive as to deprive them of any fixed bearings at all. However, he suggested that culture is "best seen not as complexes of concrete behavior patterns—customs, usages, traditions, habit clusters—as has, by and large, been the case up to now." Instead, he saw culture as, "a set of control mechanisms—plans, recipes, rules, instructions—for the governing of behavior." He further clarified the definition by indicating:

> Our ideas, our values, our acts, even our emotions, are, like our nervous system itself, cultural products—products manufactured, indeed, out of tendencies, capacities, and dispositions with which we were born, but manufactured nonetheless.[48]

Arnold added another dimension to the definition of social cultures:

> [A] particular way of life which expresses certain meanings and values not only in art and learning but also in institutions

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[44] RAYMOND WILLIAMS, THE LONG REVOLUTION, 57 (Pelican Books rev. ed., 1966).

[45] *Id.*

[46] *Id.*

[47] *Id.* at 88.

[48] CLIFFORD GEERTZ, THE INTERPRETATION OF CULTURES: SELECTED ESSAYS, 43-50 (Basic Books ed., 1973)

> and ordinary behavior. The analysis of culture, from such a definition, is the clarification of the meanings and values implicit and explicit in a particular way of life, a particular culture.[49]

After considering the modern work by anthropologists on culture, Kuper concluded that it is more advisable to talk of "knowledge, or belief, or art, or technology, or tradition, or even ideology."[50] The difficulties, he found, become most acute when culture shifts from something to be described, interpreted, even perhaps explained and is treated instead as a source of explanation in itself.[51] He decided that:

> To understand culture, we must first deconstruct it. Religious beliefs, rituals, knowledge, moral values, the arts, rhetorical genres, and so on should be separated out from each other rather than bound together into a single bundle labeled culture, or collective consciousness, or superstructure, or discourse. Separating these elements, one is led on to explore the changing configurations in which language, knowledge, techniques, political ideologies, rituals, commodities, and so on are related to each other.[52]

With the deconstruction of culture, Kuper concluded that we all have multiple identities, and even if we accept a primary identity, we might not conform to it. In his view, culture theory tends to draw attention away from what we have in common instead of encouraging us to communicate across national, ethnic, and religious boundaries, and to venture between them.[53] With increased international travel and trade, however, we must, of necessity, cross cultures and the need to develop a deeper understanding of the concept, therefore, continues.

> Geertz expanded his definition of culture to introduce the term "world view:" The moral aspects of a given culture, the evaluative elements, have commonly been summed up in the

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[49] MATTHEW ARNOLD, CULTURE AND ANARCHY AND OTHER WRITINGS, 41 (Stefan Collini, ed, 1993).

[50] ADAM KUPER, CULTURE: THE ANTHROPOLOGISTS' ACCOUNT, x-xi (Harv. U. Press ed., 1999).

[51] *Id.*

[52] *Id.* at 245

[53] *Id* at 247.

> term 'ethos,' while the cognitive, existential aspects have been designated by the term 'world view.' A people's ethos is the tone, character, and quality of their life, its moral and aesthetic style and mood; it is the underlying attitude toward themselves and their world that life reflects. Their world view is their picture of the way things in sheer actuality are, their concept of nature, of self, of society. It contains their most comprehensive ideas of order.[54]

Geertz also used ordering to explain how people make sense of themselves as cultural beings in the world:

> It is through culture patterns, ordered clusters of significant symbols that man makes sense of the events through which he lives. The study of culture, the accumulated totality of such patterns is thus the study of the machinery individuals and groups of individuals employ to orient themselves in a world otherwise opaque.[55]

These expansions of the definition of culture help us to understand how we see ourselves and how we perceive the world around us. Avruch takes a broader view and expands on intragroup cultural differences:

> [C]ulture refers to the socially transmitted values, beliefs and symbols that are more or less shared by members of a social group. These constitute the framework through which members interpret and attribute meaning to both their own and others' experiences and behavior. One key assumption implicit in this definition is that culture is a quality of social groups and perhaps communities, and that members may belong to multiple such groups. Therefore, an individual may "carry" several cultures, for example, ethnic or national, religious, and occupational affiliations.[56]

Savage emphasized this point by cautioning that "it is of limited helpfulness to conflate 'culture' with 'ethnicity' because that approach ignores the impact

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[54] GEERTZ, *supra* note 47, at 126.

[55] *Id.* at 363.

[56] Kevin Avruch, *Culture as Context, Culture as Communication: Considerations for Humanitarian Negotiations*, 9 HARV. NEGOT. L. REV. 391, 393 (2004).

of other sources of diversity which contribute to cultural identity, and perpetuates false dichotomies."[57]

The description of culture was broadened and analogized to running water by Michelle LeBaron and Venashri Pillay:

> [C]ulture is the shared, often unspoken, understandings in a group. It is the underground rivers of meaning-making, the places where we make choices about what matters and how, that connect us to others in the groups to which we belong... It is a series of lenses that shape what we see and don't see, how we perceive and interpret, and where we draw boundaries.... Culture shapes our ideas of what is important, influences our attitudes and values, and animates our behaviors... Cultures are a shifting, dynamic set of starting points that orient us in particular ways, pointing towards some things and away from others.[58]

Gold argues that:

> Culture is learned, not inherited, and is reinforced by interactions within the family, schools, membership organizations, faith communities, the workplace, and the media. By observing the behavior of others around us, we learn about details such as the uses of eye contact, the uses of space and silence, and the treatment of children or elders.[59]

This suggests that culture is not static; it is dynamic and can change with experience of the world. That propensity for change does not, however, erase the view or lens through which the world is viewed.

A very comprehensive view of the concept is put forward by Mark Davidheiser who proposes that "worldview" is a preferable term to "culture," especially in the context of conflict resolution:

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[57] Cynthia A. Savage, *Culture and Mediation: A Red Herring*, 5 AM. U. J. GENDER & L. 273 (1997).

[58] Michelle LeBaron & Venashri Pillay, *Conflict, Culture, and Images of Change*, *in* CONFLICT ACROSS CULTURES: A UNIQUE EXPERIENCE OF BRIDGING DIFFERENCES 11, 14 (LeBaron, & Pillay eds., 2006).

[59] Julia Ann Gold, *ADR Through a Cultural Lens: How Cultural Values Shape Our Disputing Processes* J. DISP RESOL. 289, 292-93 (2005).

"Culture" is often glossed as the values, norms, and habituated patterns of behavior shared among members of a given social group. There is a widespread tendency in conflict resolution and other fields to equate culture with national, racial, and ethnic identities. That standard view of culture is congruent with Kochman's differentiation between Black and White orientations. Conventional treatments of culture often fail to capture its significance or profound impact on conflict styles. Cultural orientations impact more than communication styles or goal hierarchies. Sociocultural influences extend to the deepest level, fundamentally influencing cognition and behavior by shaping one's view of life and how one perceives, interprets, and responds to particular events and phenomena. Due to the complexity of these influences, the term "worldview" may be preferable to "culture," since the former is less suggestive of a single, homogenous cognitive–interpretive mazeway shared among all members of a given group.

Worldviews encompass not only shared mores, norms, and behavioral patterns, but they also connote shared and individual expectations and the interpretative filters inherent in cognition (how we perceive and understand life and particular events). A notable benefit of using "worldview" over "culture" derives from the outdated, but seemingly indestructible, notions associated with the latter construct. While it is not a *tabula rasa*, readers encountering "worldview" are less likely to assume full comprehension of the term and skip over explanations or miss nuances in usage. Even if not defined, "worldview" is arguably more likely to be interpreted as denoting a phenomenon that is dynamic, multidimensional, associated with experience, and variable both across and within groups.

Worldviews, then, may be described as elaborate systems of understanding, expectations, and action that are continually reconstructed by individuals embedded in wider social systems. These interpretive maps are fluid; cognitive structures and filters evolve over time, undergoing continual

> iteration as they are reforged in the cauldrons of life experience and social learning.[60]

Davidheiser's worldview begins to capture the complexities and differences that inform our understanding of culture and especially takes into consideration the variability of culture that Williams referred to.

> The complexity of culture is to be found not only in its variable processes and their social definitions—traditions institutions, and formations—but also in the dynamic interrelations, at every point in the process, of historically varied and variable elements . . . . In authentic historical analysis it is necessary at every point to recognize the complex interrelations between movements and tendencies both within and beyond a specific and effective dominance. It is necessary to examine how these relate to the whole cultural process rather than only to the selected and abstracted dominant system.[61]

These selected definitions confirm that culture is genuinely complex and "variations of meaning" capture the complexity of the term.[62] As a result, the number of definitions continue to grow from the over 163 identified by anthropologists in the 1960's.[63] Hall also noted that "there is no single, unproblematic definition of 'culture' to be found. The concept remains a complex one—a site of convergent interests, rather than a logically or conceptually clarified idea.[64] This complexity should also alert an ADR trainer or practitioner to the difficulties in teaching or practising dispute resolution in the local multicultural or international theatre.

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[60] Davidheiser, *supra* note 27, at 67.

[61] Raymond Williams, *Selections from Marxism and Literature, in* CULTURE/POWER/HISTORY: A READER IN CONTEMPORARY SOCIAL THEORY, 585, 604 (Nicholas B. Dirks, Geoff Elley & Sherry B. Ortner, eds., 1994).

[62] WILLIAMS, *supra* note 39, at 59.

[63] A. L. KROEBER & CLYDE KLUCKHOHN, CULTURE: A CRITICAL REVIEW OF CONCEPTS AND DEFINITIONS (Random House ed., 1963)

[64] Stuart Hall, *Cultural Studies, in* CULTURE/POWER/HISTORY: A READER IN CONTEMPORARY SOCIAL THEORY 520, 522 (Nicholas B. Dirks, Geoff Elley & Sherry B. Ortner, eds., 1994).

B. *Power, Culture and "Other"*

No discussion of culture is complete without looking at the place of power, dominance, race and ethnicity in the overall concept. Dirks sets out the precursor of our continuing struggle to define "culture:"

> The anthropological concept of culture might never have been invented without a colonial theater that both necessitated the knowledge of culture and provided a colonized constituency that was particularly amenable to 'culture'. Without colonialism, culture could not have been so simultaneously, and so successfully, ordered and orderly, given in nature at the same time that it was regulated by the state. Even as much of what we now recognize as culture was produced by the colonial encounter, the concept itself was in part invented because of it. Culture was also produced out of the allied network of processes that spawned nations in the first place. Claims about nationality necessitated notions of culture that marked groups off from one another in essential ways, uniting language, race, geography and history in a single concept.[65]

In Dirk's view, colonialism "was itself a cultural project of control . . . Cultural forms in newly classified 'traditional' societies were reconstructed and transformed by and through colonial conquest and rule which created new categories and oppositions between colonizers and colonized: European and Asian, modern and traditional, West and East."[66] The idea of colonialism as a tool to create the cultural "other" was developed by Gupta and Chattopadhyaya:

> It is not surprising that many people of the industrially developed countries think that the peoples of the underdeveloped or developing countries are culturally inferior to them. They also believe that their cultures are superior to those of their 'cultural others'. The hidden assumption is that the cultures of countries like USA, Canada, UK, France, Germany, Italy and Japan, essentially based on modern science and technology, are to be rated higher than

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[65] NICHOLAS B. DIRKS, COLONIALISM AND CULTURE, 3 (U. of Mich. Press ed., 1992).
[66] *Id.*

> those of others. Except for Japan, all these countries are Euro-American.[67]

This analysis accorded with Herder's view that the concept of culture was introduced as a means to designate some cultures as "superior" and others as "inferior."

Concepts of European colonization and dominance of some groups inevitably lead to consideration of "race" and "othering" and their place in the cultural discussion. Jandt posits that, "We cannot discuss culture without making a passing reference to "race." The biologically based definition of race is derived in 1735 from Carolus Linnaeus, a Swedish botanist, physician, and taxonomist, who classified humans into four types: Africanus, Americanus, Asiaticus and Europeaeus."[68]

In scanning the literature on identity and race in the United State (which can also be analogized to Canada), Jandt indicates that White culture resulted from a synthesis of ideas, values, and beliefs inherited from European ethnic groups.[69] As a dominant culture in the United States, White culture is the foundation of social norms and organizations.[70] Racial categorization is prevalent especially among people who live in a 'multiracial' society.[71] This can lead to "othering" or the degrading of cultures and groups outside of one's own and creating artificial divisions between cultures and groups by labeling language that emphasizes power relations and domination.[72] However, while race and skin colour can be an identifying factor, they do not necessarily define co-cultural or subculture identity. Perceptions of racial disparity can lead to socially constructed stereotypes and prejudice which influence interracial communication.[73]

It is important also to understand that while each culture might consider itself favourably, that is not always how it is seen by others. For example, while most in the dominant culture of the United States have a positive view of "American culture," René Rémond, as cited by Zølner, made a very different observation:

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[67] Chhanda Gupta & D. P. Chattopadhyaya, *Introduction, in* CULTURAL OTHERNESS AND BEYOND (Brill ed., 1998).

[68] JANDT, *supra* note 12 at 19.

[69] *Id.*

[70] *Id.*

[71] *Id.*

[72] *Id.*

[73] *Id.* at 19-23.

> From being a model of democracy and freedom, the United States came to incarnate the dictatorship of mass democracy and its culture came to be seen as a lack of 'culture'. The American way of life was considered to be monotonous, materialistic, rude, cruel, and deprived of intellectual pleasures, and Americans were criticized for their worship of mammon.[74]

In a telling observation, Rosemary Brown, the first Black female parliamentarian who had immigrated to Canada as a student from Jamaica, used her 45-year experience to describe Canadian attitudes as follows: "If I were to write a book about Canada and its people, the title would be 'Let's Pretend, Let's Deny.' The first line would read, 'Canadians are a tolerant and compassionate people . . . at least that is what they tell me.'"[75]

This might not be how Americans or Canadians in the dominant group view their culture but being analysed through the lens of "other" can be painful, disorienting and conflictual. These two quotes are used to show how descriptions can be jarring and may instill resentment which, in turn, could compromise learning in a class where these viewpoints are detected. Even when derogatory comments about another culture are not verbalized, the trainer's attitudes and classroom atmosphere can compromise cross-cultural communication and the lessons they are seeking to convey.

These analyses are a helpful first step in understanding how conflicts can develop with differences in worldviews. As Kuper pointed out, "unlike scientific knowledge, the wisdom of culture is subjective. Its most profound insights are relative, not universal laws."[76] There is no "universal" world view. As much as "men of culture, true apostles of equality," wanted "culture to do away with classes, make all men live in an atmosphere of sweetness and light . . . using ideas freely . . . ,"[77] that was not to be. While Kuper found that, in a general sense, culture is simply a way of talking about collective identities ... many people believe that cultures can be measured against each other, and they are inclined to esteem their own culture more highly than that of others.

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[74] Mette Zølner, *Making Sense of Globalisation: French Narratives and Anti-Americanism*, *in* INTERCULTURAL ALTERNATIVES: CRITICAL PERSPECTIVES ON INTERCULTURAL ENCOUNTERS IN THEORY AND PRACTICE, 49, 56 (Blasco & Jan Gustafsson, eds., 2004) (citing René Rémond, LES ETATS-UNIS DEVANT L'OPINION FRANÇAISE, 1815-52 (Colin ed., 1962)).

[75] Rosemary Brown, *Overcoming Sexism and–How?*, *in* RACISM IN CANADA 163, 168 (Ormond McKague ed., 1992).

[76] KUPER, *supra* note 49, at 6.

[77] ARNOLD, *supra* note 48, at 59.

They may even believe that there is only one true civilization, and that the future not only of the nation but the world depends on the survival of their culture. As a result, he opined, "when people of different nations and ethnic groups meet, whole cultures confront each other, and something must give in the confrontation."[78]

In summary, we can appreciate Geertz' caution that "cultural analysis is intrinsically incomplete and the more deeply it goes the less complete it is."[79] The term "culture" is imbued with the historical realities of power, race, superiority and colonialism which can result in relegating some to the position of "other." However, culture is a deeply compromised idea we cannot yet do without.[80] Conceding the complexity and difficulty in defining culture, what is clear is that it is the very essence of individuals. It provides the lens through which we see ourselves and view the world. As Regulus and Leonaitis indicated, it provides meaning and purpose for our lives. It is a means of solving problems that groups experience over time.[81] Culture is also the source of conflict. Therefore, the DR teacher who fails to acknowledge their own worldview and ignores or diminishes the culture or worldview of a learner is inviting disputes and misunderstanding into the classroom. As important, they could be impeding the learning of the student.

V. NEUROSCIENTIFIC ARGUMENT FOR INCLUSION OF CULTURE

Ignoring, minimizing, misconstruing or stereotyping a learner's culture or worldview can be psychologically damaging. The inclusion of culture in DR teaching can help the teacher to recognize and avoid neuroscientific factors such as stereotyping and stereotype threat and avoid distrust between learner and teacher.

A. *Stereotype and Stereotype Threat*

What is the relationship between culture and stereotyping? Clifford found that discourse in global power systems is elaborated vis-à-vis, a sense of difference or distinctness that can never be located solely in the continuity of a culture or tradition. It was his view that identity is conjectural with the result that, Cultural" difference is no longer a stable, exotic otherness; self-other relations are matters of power and rhetoric rather than of essence . . .

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[78] KUPER, *supra* note 49, at 3-4.

[79] GEERTZ, *supra* note 47, at 29.

[80] JAMES CLIFFORD, THE PREDICAMENT OF CULTURE: TWENTIETH-CENTURY ETHNOGRAPHY, LITERATURE, AND ART, 10 (Harv. U. Press ed., 1988).

[81] Regulus & Leonaitis, *supra* note 4.

With expanded communication and intercultural influence, people interpret others and themselves, in a bewildering diversity of idioms.[82] Even though we may become conscious of the individual and society and not just the descriptions, Williams posits that "so much actual experience and behaviour is tied to them, the realization can seem merely academic."[83] We could then categorize or fill in information which could result in stereotyping that may be fairly accurate or very biased and inaccurate.[84]

While understanding a people's culture exposes their normalness without reducing their particularity, [85] the lack of consideration of the differences within cultures can give rise to what Walter Lippmann coined "social stereotypes." [86] In short, stereotypes are often conceptualized as inaccurate expectations about individuals based on group membership and can be positive and negative about the characteristics and behaviours of a particular group.[87] Even though these stereotypes might have gained currency at a particular point in history, they establish themselves in our minds as absolutes. The problem that Steele and Aronson saw with stereotypes—"the picture in our heads"—is that:

> [Stereotypes] . . . function as expectations of what people in particular categories will be like and what they can and cannot do, thus allowing us to fill in the blanks when information is ambiguous and incomplete. Stereotypes are overgeneralizations; they encourage simplistic thinking that

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[82] CLIFFORD, *supra* note 79, at 11-22.

[83] WILLIAMS, *supra* note 39, at 89- 90.

[84] LEO DRIEDGER, THE ETHNIC FACTOR: IDENTITY IN DIVERSITY, 343-44 (McGraw-Hill Ryerson ed., 1989 ("People form a *gestalt* which may be fairly accurate or very biased and inaccurate. The assumption that, when we know the facts about another person or group, we will act on those facts is not necessarily true. Reason does not always prevail: emotions often impose positive and negative evaluations. When images of others become rigid, like the printer's stereotype, and when they produce the same reaction automatically without further examination, then we have a social stereotype").

[85] GEERTZ, *supra* note 47, at 14.

[86] WALTER LIPPMANN, PUBLIC OPINION, 81 (Harcourt Brace ed., 1922) ("The problem of acquisition of meaning of things, or forming habits of simple comprehension, is thus the problem of introducing: 1) definiteness and distinction and 2) consistency or stability of meaning into what is otherwise vague and wavering. In the great booming, buzzing confusion of the outer world we pick out what our culture has already defined for us, and we tend to perceive that which we picked out in the form stereotyped for us by our culture."

[87] Sandra Graham & Cynthia Hudley, *Race and Ethnicity in the Study of Motivation and Competence*, *in* HANDBOOK OF COMPETENCE AND MOTIVATION 392, 394 (Andrew J. Elliot & Carol S. Dweck eds., 2005).

> ignores individual differences between people who belong to certain categories.[88]

Stereotypes can have a deleterious psychological impact on the "typed" individual's cognition and performance. Coining the term "*stereotype threat,*" Steele and Aronson concluded that, just as mere knowledge of a stereotype can influence the thinking and behaviour of a teacher, parent, or peer, it can also, in a variety of ways, impact the student more directly.[89]

It arouses anxiety, performance can be lowered even without withdrawal of effort, imposes extra cognitive burden such as reduced working memory capacity, increases heart rate variability, taxes self-regulation capacity which is needed for executive functions such as self-control, memory and organizational skills. In addition, the so-called "*ideomotor effect*" can occur automatically; that is, it comes into play where there is no apparent mediator between thought and action (when a stereotype has been mentally activated without conscious awareness, people display a tendency to behave in line with it). The ideomotor effect does not appear to require any sense of threat or anxiety; people only need know the stereotype's content. Importantly, one need not believe a stereotype in order to feel threatened by its implications. Even if one rejects the premise of a stereotype, one nevertheless must contend with others and what they think. Feelings of unease or alienation are sufficient to undermine performance.[90]

Perceived discrimination can occur in almost any arena. It can be blatant, intended, and obvious; or subtle, unintended, and not easy to detect. This subtle discrimination has been termed "*microaggression*" and can be pernicious kind of degradation that many people of colour encounter on an almost daily basis. Examples of micro-aggression include being ignored or overlooked while waiting in line, being suspected of cheating because one received a good grade on a test, being followed or observed while in public places, or being mistaken for someone who serves others. On the face of it,

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[88] Joshua Aronson & Claude M. Steele, *Stereotypes and the Fragility of Academic Competence, Motivation, and Self-Concept*, *in* HANDBOOK OF COMPETENCE AND MOTIVATION 436, 438 (Andrew J. Elliot & Carol S. Dweck eds., 2005).

[89] C. M. Steele & J. Aronson, *Stereotype Threat and the Intellectual Test Performance of African Americans*, 69 J. PERSONALITY & SOCIAL PSYCH. 797-811; *see also* C. M. Steele, A Threat in the Air: *How Stereotypes Shape Intellectual Identity and Performance*, 52 AMERICAN PSYCHOLOGIST 613-629 (1997). *See also* Graham and Hudley, *supra* note 86, at 396, who define "*stereotype threat*" as the awareness that individuals have about negative stereotypes associated with their group.

[90] Aronson & Steele, *supra* note 87, at 446-48.

one such experience may seem fairly benign, but cumulative micro-aggressions can surely take their toll on mental health.[91]

When a person's identity or culture is undermined, it can trigger a stress response. The cerebral cortex sends messages to the hypothalamus which stimulates the sympathetic nervous system and adrenal glands which, in turn, secrete corticoids. This causes neurochemical and hormonal reactions which increase the heart rate, blood pressure, muscle tension and breathing (causing the "flight or fight" response) and blocking the ability to learn. People's emotions and behaviors are influenced by their perceptions of events—that is, it is not the situation, but the way it is interpreted, that determines how people feel.[92] Acute stress (in the sense of 'fight or flight' or major life events) and chronic stress (the cumulative load of minor, day-to-day stresses) can both have long-term consequences. Two factors largely determine individual responses to potentially stressful situations: the way a person perceives a situation and a person's general state of physical health, which is determined not only by genetic factors but also by behavioral and lifestyle choices. Whether one perceives a situation as a threat, either psychological or physical, is crucial in determining the behavioral response—whether it is fleeing, fighting, or cowering in fear—and the physiologic response—calmness or heart palpitations and elevated cortisol levels. "Individuals from differing cultures will differ, not just in their observable norms and behaviours, but also in their underlying neuropsychology—their ways of understanding and ascribing meaning to interactions."[93]

In interviews with adult learners, Weil found that they reported that in some adult learning circumstances, they sometimes experienced disjunction, a sense of feeling at odds with themselves inside the learning institution. This disjunction can be associated with feelings of alienation, anger, frustration and confusion causing a sense of fragmentation of both personal and social identity. With disjunction comes the potential for education or miseducation, depending on past or current circumstances. "When miseducation results, the overall sense of identity as a learner can be fundamentally undermined" and can lead to damaging internalization of the experience. Among the

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[91] Graham & Hudley, *supra* note 86, at 394.

[92] Susan Fukushima & Sui Wa Tang, *Cultural Transitions: A Biopsychosocial model for Cultural Adaptation*, *in* CROSSING CULTURES: INSIGHTS FROM MASTER TEACHERS 145, 147-50 (Nakiye Avdan Boyacigiller, Richard Alan Goodman & Margaret E. Phillips, eds., 2003).

[93] J. F. McCarthy, C. Scheraga, & D. Gibson, *Culture, Cognition and Conflict: How Neuroscience Can Help to Explain Cultural Differences in Negotiation and Conflict Management*, *in* FOUNDATIONS IN SOCIAL NEUROSCIENCE 1127 (John T. Cacioppo, Gary G. Berntson et al. eds., 2002).

experiences which characterized the sense of disjunction were two that have special significance for dispute resolution trainers:

(a) The ways in which social differences and power relations were experienced and managed in the learning environment; and
(b) The extent to which core aspects of their personal and social identity felt threatened or at risk in that environment.[94]

Weil concluded by reminding us that adult learners do not just bring their experiences with them into education; they are their experiences. The answers to these issues do not lie in academic theories but in expressing respect, concern and care for individuals, and in giving priority to the need for adults to build upon and make sense of their experiences within the context of their own and others 'life worlds.'[95]

Savage also emphasizes that to avoid the dangers of stereotyping, it is critical to identify a theoretical framework which does not conflate 'culture' with ethnicity, but rather synthesizes the effects of multiple cultural, subcultural, and individual influences on the identity of the individual participant."[96]

B. *Trust and Distrust between Learner and Trainer*

Stereotype threat and microaggression in cross-cultural learning can result in distrust between learner and trainer. Distrust, taken to its extreme can lead to false or exaggerated cognitions that one is subject to malevolent treatment by others.[97] Lewicki theorizes that the greater the variety of settings and contexts in which we interact with another person, the more complex and multifaceted the relationship becomes. Both trust and distrust have a valid role in managing complex relationships. Trust is valuable insofar as it is appropriate to the context, and a healthy amount of distrust can protect against the risk of exploitation or inhibition of sound decision-making. He defines "trust" and "distrust" as follows: "Trust evokes a feeling of hope and a

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[94] Susan Warner Weil, *Access: Towards Education or Miseducation? Adults Imagine the Future, in* CULTURES AND PROCESSES OF ADULT LEARNING 159, 159-76 (Mary Thorpe, Richard Edwards & Ann Hanson eds., 1993).

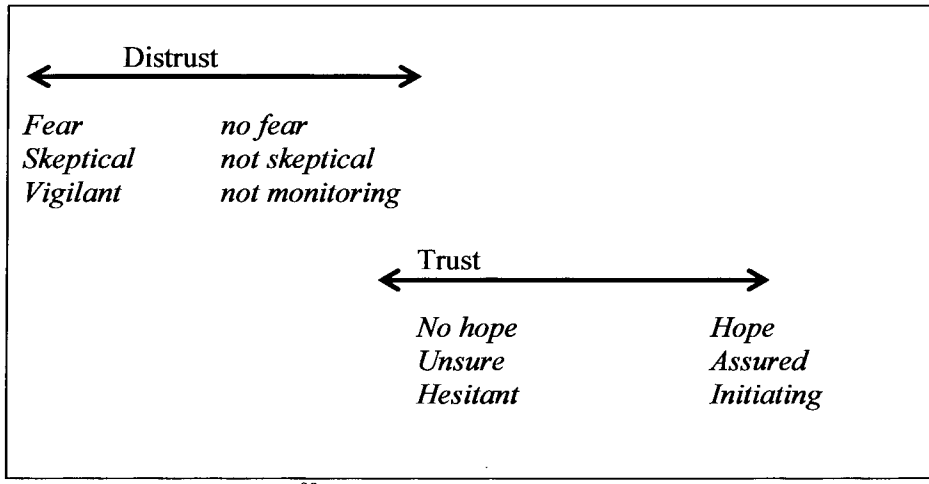
[95] *Id.* at 175.

[96] Savage, *supra* note 56, at 274.

[97] Roderick M. Kramer, *The Sinister Attribution Error: Paranoid Cognition and Collective Distress in Organizations*, 18 MOTIVATION & EMOTION 199 (1994).

demonstrated willingness to become vulnerable to the trustee. Distrust, on the other hand, evokes fear and actions to buffer oneself from the harmful conduct of the other party." Instead of viewing trust and distrust as a continuum, one should consider them as existing along separate dimensions. Hence, we can both trust and distrust another person.[98]

FIGURE 1 - DIMENSIONS OF TRUST AND DISTRUST



Source: Roy J. Lewicki[99]

There are two types of distrust: *calculus-based distrust* where one is confident of negative expectations of another's conduct; and *identification-based distrust* where there is confident negative expectations of another's conduct, grounded in a perceived incompatibility of closely-held values, dissimilar or competing goals, and/or a negative emotional attachment to the other.[100] This paper deals primarily with identification-based distrust where the distrust can be felt viscerally and cognitively. The parties can either overtly work on building trust or can learn to live with the distrust while collaborating on mutual goals. For effective DR learning, both teacher and student would learn more in a process not proscribed by identification-based distrust.

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[98] Roy J. Lewicki, *Trust and Distrust, in* THE NEGOTIATOR'S FIELDBOOK 191, 192-93 (Andrea Kupfer Schneider & Christopher Honeyman eds., 2006).

[99] *Id.* at 192.

[100] *Id.* at 196.

VI. TOOLS FOR TEACHING DISPUTE RESOLUTION ACROSS CULTURES

Learning is by its very nature a tension and conflict-filled process[101]

The difficulties and pitfalls in teaching across cultures and worldviews are daunting but not insurmountable. As the Kpelle shared their moot with us, we too can share our developing knowledge of DR by learning how to circumvent or mitigate the damage that could be caused when reaching across cultures. This is achievable by learning about value orientations, power distance, cultural competence, cross-cultural communication, and mindfulness.

To be able to teach dispute resolution in multicultural world, one must first understand the meaning of intercultural conflict. Ting-Toomey and Oetzel provide the following comprehensive definition: "Intercultural conflict is defined as the experience of emotional frustration in conjunction with perceived incompatibility of values, norms, face orientations, goals, scarce resources, processes, and/or outcomes between a minimum of two cultural parties from two different cultural communities in an interactive situation."[102]

Trainers in dispute resolution must therefore know themselves, have deep knowledge of conflict resolution techniques, culture, cultural communications, and be mindful. At least one author has suggested that negotiation is a universal practice that is culture-free and culture is about how negotiation is practised.[103] Two questions need to be asked about this viewpoint: who decides what is "universal;" and, what is the trainer's role in developing the learner's abilities in a multicultural world? As Kovach noted, the increasingly accepted notion is that there is no universal base of negotiation

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[101] David A. Kolb, *The Process of Experiential Learning*, *in* CULTURES AND PROCESSES OF ADULT LEARNING 138, 147 (Mary Thorpe et al. eds., 1993).

[102] STELLA TING-TOOMEY & JOHN G. OETZEL, MANAGING INTERCULTURAL CONFLICT EFFECTIVELY 17 (1st ed. 2001).

[103] Robert S. Spich, *Negotiating Culture*, *in* CROSSING CULTURES: INSIGHTS FROM MASTER TEACHERS 293, 293-94 (Nakiye Avdan Boyacigiller et al. eds., 2003). In discussing the place of culture in negotiation training, Spich starts with the proposition that negotiation is a universal practice that is culture-free, and culture is about how negotiation is practised. In his view, the focus is on the learner who builds from a universal base and then analyzes the specifics of cultural impacts on the universal case. The teacher's role is to point out that the outcome of the negotiation is controlled by the learner's behaviour by assisting in self-assessment, identification of applicable skills, and putting ideas into practice.

because while culture and diversity impact the negotiation itself, culture and diversity also impact individuals and their learning processes.[104]

Local and international cross-cultural teaching and learning are interactions across culture and it is important to be aware of differing value orientations, non-verbal patterns, and structures of argument. It is also important to have a firm understanding of the concepts of cross-cultural communication, cross-cultural competence, and the special needs of adult learners.

A. *Value Orientations*

Having developed the concept of value orientations, Clyde Kluckhohn emphasized that values do not describe an actual behaviour; they have to do with what is judged "good" or "bad." Statements about values describe the standard by which behavior is evaluated; they do not describe the actual behaviour. Beliefs are statements about what is true and false.[105] The definition of Florence Kluckhohn and Strodtbeck of the concept is a helpful starting point:

> Value orientations are complex and definitely patterned (rank-ordered) principles, resulting from the transactional interplay of three analytically distinguishable elements of the evaluative process—the cognitive, the affective, and the directive elements—which give order and direction to the ever-flowing stream of human acts and thoughts as these relate to the solution of 'common human' problems.[106]

They explained that "the cognitive and the affective elements, each one in itself and both in their relationships one to another, are causal in a way which the directive element is not, and the directive element contains both integrative and guiding influences which the cognitive and affective elements do not possess." In the final analysis, Kluckhohn and Strodtbeck were of the view that, in the concept of value orientation as a guiding principle, it is the directive

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[104] *See* Kimberlee K. Kovach, *Culture, Cognition and Learning Preferences*, *in* RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE 343-45 (Christopher Honeyman et al. eds., 2009).

[105] Clyde Kluckhohn, *Values and Value-Orientations in the Theory of Action: An Exploration in Definition and Classification*, *in* TOWARD A GENERAL THEORY OF ACTION 390-406 (Talcott Parsons & Edward Shils eds., 1951).

[106] FLORENCE R. KLUCKHOHN & FRED L. STRODTBECK, VARIATIONS IN VALUE ORIENTATIONS 4 (1st ed. 1973).

element which is of primary interest for the understanding of both the integration of the total value system and its continuity through time.[107] They stressed that:

> [A]s for continuity through time, it is a fact known to anyone who has become seriously engaged in cross-cultural studies that the ideas and techniques a people either 'borrow from' or have 'forced upon' them by another culture are far more often adapted to the old ways of thinking and acting than they are disruptive of those ways.[108]

This should cause DR trainers to exercise caution when teaching and training across cultures.

The concept of value orientations assumes that there are a limited number of universally common human problems and conditions in all societies and only a limited number of solutions to these problems. All solutions are present in all societies at all times but are differentially preferred. Each society has a dominant value orientation and variants of possible solutions which are ordered according to preference.

Kluckhohn and Strodtbeck postulated that there are five value orientations which are common to all human groups: human nature, man nature, time, activity and relational, with ranges of variability within each group. From these could be developed a ranking of dominant and minority value orientations, but they cautioned that attention has to be given to the full range of variations or differences within each orientation.[109]

Admitting that their distinctions are arbitrary and that all variations may exist in one society, Condon and Yousef proposed further additions to Kluckhohn and Strodtbeck's value orientations as follows:[110]

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[107] *Id.* at 8-9.

[108] *Id.* at 9.

[109] *Id.* at 10-12.

[110] JOHN C. CONDON & FATHI YOUSEF, AN INTRODUCTION TO INTERCULTURAL COMMUNICATION 60-62 (1st ed. 1975).

TABLE 1: CONDON & YOUSEF - EXPANDED VALUE ORIENTATIONS

	Individualism – Interdependence	Individualism	Individuality	Interdependence
SELF	**Age**	Youth	The Middle Years	Old Age
	Sex	Equality of sexes	Female superiority	Male superiority
	Activity	Doing	Being-in-becoming	Being
THE FAMILY	**Relational orientations**	Individualistic	Collateral	Lineal
	Authority	Democratic	Authority-centered	Authoritarian
	Positional role Behavior	Open	General	Specific
	Mobility	High mobility	Phasic mobility	Low mobility, stasis
SOCIETY	**Social reciprocity**	Independence	Symmetrical – obligatory	Complementary – obligatory
	Group Membership	Many groups, brief identification, subordination of group to individual	Balance of No. 1 and 3	Few groups, prolonged identification, subordination of the member to the group
	Intermediaries	No intermediaries (directness)	Specialist intermediaries only	Essential intermediaries

	Formality	Informality	Selective formality	Pervasive formality
	Property	Private	Utilitarian	Community
HUMAN NATURE	**Rationality**	Rational	Intuitive	Irrational
	Good and Evil	Good	Mixture of good and evil	Evil
	Happiness, Pleasure	Happiness as goal	Inextricable bond of happiness and sadness	Life is mostly sadness
	Mutability	Change, growth, learning	Some change	Unchanging
NATURE	**Relationship of man and nature**	Man dominating nature	Man in harmony with nature	Nature dominating man
	Ways of Knowing Nature	Abstract	Circle of induction – deduction	Specific
	Structure of Nature	Mechanistic	Spiritual	Organic
	Concept of Time	Future	Present	Past
THE SUPER-NATURAL	**Relationship of man and the supernatural**	Man as god	Pantheism	Man controlled by the supernatural
	Meaning of Life	Physical, material goals	Intellectual goals	Spiritual goals

	Providence	Good in life is unlimited	Balance of good and misfortune	Good in life is limited
	Knowledge of the cosmic order	Order is comprehensible	Faith and reason	Mysterious and unknowable

Source: CONDON & YOUSEF at 60-62.

Condon and Yousef emphasized that values and value orientations refer here to cultures, not nations which are political identities which may contain within it many quite different cultures; similarly, national borders may politically distinguish areas which are culturally identical. They gave as an example the lines drawn in Europe during the last century "slicing up Africa into European colonies that produced some nations which contain many different cultures, and cruelly divided unified cultures into separate nations."[111]

There are a few important points to be made about value orientations. A value orientation is not characterized only by dominant variation; all of the variations in that orientation may be present in different ranking. Even though one variation might dominate in one group, another variation might be predominant with another group in the same country. All the value orientations are present in any culture or society at all times. Savage also makes four important points to keep in mind when discussing value orientations:

1. Values have to do with normative as opposed to existential propositions;
2. Values are different from preferences: different preferences may have the same underlying value; and the same preference shared by two people may have different underlying values.
3. An individual's value orientations cannot necessarily be predicted through knowledge of the individual's ethnicity. Each individual is influenced by a number of subcultures and sources of diversity at any one time, and one must also take into account individual differences.
4. Some value orientations may exist only in certain combinations, and there may be a connection between

[111] *Id.* at 48-49.

> cultural values and certain forms of non-verbal behavior or communication.[112]

After reviewing the literature, Jandt adopted Kluckhohn & Strodtbeck's value orientation theory to provide the following description of United States culture:[113]

TABLE 2: JANDT'S VALUE ORIENTATION OF UNITED STATES CULTURE

VALUE ORIENTATION	DESCRIPTION
Human being-Nature	• Most religious of industrialized states • Make clear distinctions between human life and nature, placing a higher value on human life • Strong faith in the scientific method • Materialism or belief in possessions
Activity	• Work becomes part of one's identity • Positive value is placed on change
Time Orientation	• Time is linear • Time is viewed as a commodity
Relational	• Emphasis on individualism and self-motivation • Belief in equal opportunity is an important cultural myth • Emphasize conformity to modern norms.

Since it refers to a nation and does not show differences in values and across orientation, some Americans would rightly declare vehemently that the table does not reflect their values. Their reaction would be no different to value orientations attributed to other nations, ethnic groups or race.

The concept of value orientation has been criticized by Holden,[114] while Bird and Osland indicate they can lead to "sophisticated stereotyping" which are "necessary but insufficient tool to understand culture." As they see

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[112] Savage, *supra* note 56, at 277.

[113] JANDT, *supra* note 12, at 222.

[114] NIGEL J. HOLDEN, CROSS CULTURAL MANAGEMENT: A KNOWLEDGE MANAGEMENT PERSPECTIVE (2002).

it, "culture is too paradoxical and complex for ethnic frameworks alone." They cautioned that cultural stereotypes can be helpful—*provided* we acknowledge their limitations. They are more beneficial in making comparisons between cultures than in understanding the wide variations of behavior within a single culture. The danger in sophisticated stereotyping is that it may lead individuals to think that the number and type of the values is limited to the value orientations enunciated and they fit together easily.[115]

While it might be tempting to categorize a culture as having a specific value, there have been instances where both ends of any bipolar value have been found within the same culture, depending on the context. This paradox is explained by Western insistence on framing culture as bipolar, and "value trumping" is the explanation.[116] Bird and Osland point out, however, that, "foreigners who do not understand enough about the cultural context to interpret why or when one value takes precedence over another perceive such behaviour as paradoxical. Within one's own culture, learning such nuances occurs more or less automatically, and we do not expect consistency."[117] They conclude, "A true understanding of the logic of another culture includes comprehending the interrelationships among values in a given context. The challenge is in how to teach a perspective that will encourage people to look for those interrelationships and provide a mechanism for identifying them."[118]

In dispute resolution, the trainer who wishes to teach across cultures has to learn not only the surface manifestation of the learner's culture, she must also comprehend the nuances within the culture in the given context and match them to the appropriate schemas[119] to make sense of the value trumping behaviour. So, while developing cultural competence is advocated as a means of negotiating across cultures, nuances within a culture develop over a lifetime and are not easily mastered.

Bird and Osland suggest a cultural sense-making model conveys a holistic understanding of culture while explaining how culture is embedded in context. Since context is also embedded in culture, they argue that sense-making is situated in the broader culture. Cultural sense-making is an ongoing

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[115] Allan Bird & Joyce S. Osland *Teaching Cultural Sense-making, in* CROSSING CULTURES INSIGHTS FROM MASTER TEACHERS 89, 91 (Nakiye Avdan Boyacigiller, et al. eds., 2003).

[116] *Id.* at 92-93. "Value trumping" is the recognition that in specific contexts certain sets of values take precedence over others.

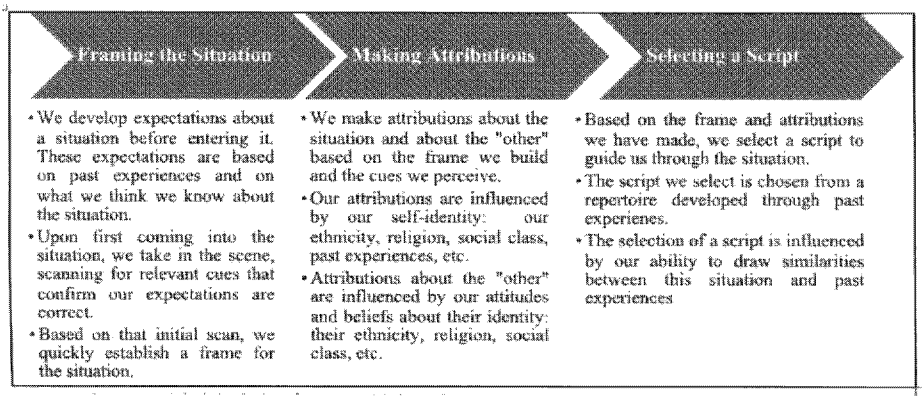
[117] *Id.*

[118] *Id.* at 92.

[119] Jean Piaget, CONSTRUCTION OF REALITY IN THE CHILD (1957). Knowledge is developed through experiences and discoveries of learners who develop mental models (*schemas*) to explain those experiences.

process involving an iterative cycle of sequential events: framing the situation, making attributions, and selecting a script while keeping in mind the cultural values and cultural history.[120] The following figure shows their cultural sense-making process:

TABLE 3: BIRD & OSLAND- CULTURAL SENSE-MAKING PROCESS



Source: Bird & Osland, *supra* 226, at 95

The issue with the sense-making model is that "making attributions" is at the heart of the model. Making attributions about "other" based on ethnicity, religion, social class, etc. can devolve into stereotyping. A trainer using this model would have to be continuously vigilant to ensure their sense-making does not devolve into stereotyping.

In the end, the following definition of value patterns by Gold shows how the complexities of our culture eventually determine how we resolve conflict and how we believe the "other" should resolve conflicts:

> Value patterns are constructs for discussion of cultural differences among national groups and individuals. While everyone within a particular national group will not share the same values, a majority of individuals within that group will conform to similar values, creating what we call the "dominant culture." Those who do not conform to the dominant culture will exhibit different cultural values, creating subcultures and co-cultures. Within the dominant culture and subcultures, individuals inhabit multiple levels of culture, from national identity to family, professional or

[120] Bird & Osland, *supra* note 114, at 94-97.

> workplace identity, or regional, gender and generational affiliations. These layers of cultural affiliation affect everything we do, including how we resolve conflicts for ourselves and our beliefs about how others should resolve conflict.[121]

Since culture is often the cause of conflict and it determines how conflict is resolved, it is imperative that an in-depth exploration of culture be included in dispute resolution training.

B. *Power Distance*

After studying IBM employees in 40 countries, management researcher Hofstede identified four variations of value dimensions across cultures: individualism/collectivism—how people define themselves and their relationships with others; masculinity/femininity—the social roles of women in the culture; power distance—he way a society deals with inequalities; and uncertainty avoidance—the extent to which people in a culture feel threatened by uncertain or unknown situations. The following table summarizes his findings:[122]

TABLE 4: HOFSTEDE'S VALUE DIMENSIONS ACROSS CULTURES

VALUE DIMENSION	VALUE
Individualism	• The interest of the individual prevails over the interest of the group • Ties between individuals are loose • People look after themselves and their immediate families • Goals are set with minimal consideration for the group • Societies loosely integrated • Stress individual accomplishment • Direct style of communication

[121] Gold, *supra* note 58, at 295.

[122] Geert Hofstede, CULTURE'S CONSEQUENCES: INTERNATIONAL DIFFERENCES IN WORK RELATED VALUES 212 (1980).

VALUE DIMENSION	VALUE
Collectivism	• Interest of the group prevails over the interest of the individual • People are integrated into a strong cohesive group that continues throughout a lifetime to protect in exchange for unquestioning loyalty • Groups are taken into consideration when goals are set • Societies are tightly integrated • Stress interdependence • Indirect style of communication
Masculinity	• Strive for maximal differentiation between roles of women and men • Stress decisiveness, assertiveness, competition and material success
Femininity	• Permit more overlapping social roles for the sexes • Place high value on quality of life, interpersonal relationships and concern for the weak • Stress intuition and consensus
Power Distance (High)	• Children obedient towards parents • Respect for people of higher rank • Deferential or indirect speech in communicating with individuals of perceived higher rank • Superiors and subordinates consider each other unequal • Income is more evenly distributed • Power, prestige and wealth concentrated in few hands • Country tends to be more authoritarian
Power Distance (Low)	• Children treated as more or less equals • Less deference for people of higher rank • Less deferential speech
Uncertainty Avoidance (Strong)	• Expressed through nervous stress • Need for predictability • Need for written or unwritten rules

VALUE DIMENSION	VALUE
	• Active, aggressive, emotional, compulsive • security seeking • Intolerant • Students expect teachers to be experts who have all the answers
Uncertainty Avoidance (Low)	• No more rules than necessary • Precision and punctuality have to be learned • Contemplative, less aggressive, unemotional, relaxed • Accepting of personal risks • Relatively tolerant • Accept teachers who admit to not knowing all the answers • Employees work hard only when needed

This concept was termed "power distance" and defined as the extent to which less powerful members of societies and institutions accept an unequal distribution of power. The higher the power distance in a culture, the more its members accept unequal distribution of power. The hypothesis is that power distance affects expectations so that members of the group with less power will accept less involvement in decision-making in order to preserve harmony in the group as a whole. A DR trainer who presumes that a student is of a lower power distance and acts accordingly might unintentionally trigger stereotype threat with the resultant undermining of the performance of the student.

C. *Being Culturally Competent*

We now understand the central role that culture and worldview play in causing conflict. We have also discussed how historical definitions of culture divided people and designated some as "other." Misunderstanding, minimizing, ignoring or stereotyping the culture of learners can lead to psychological trauma including stereotype threat and distrust between learner

and trainer. Therefore, to be effective in DR training, a trainer must, at the very least, develop cultural competence to teach intra and inter-cultural groups.

Delphin and Rowe of Yale University School of Medicine define "cultural competence" as "knowledge and information from and about individuals and groups that is integrated and transformed into clinical standards, skills, service approaches, techniques, and marketing programs that match the cultural experiences and traditions of clients and that increase both the quality and appropriateness of . . . services and . . . outcomes."[123] Adapting this description, we can arrive at a working definition for cultural competence in teaching dispute resolution as follows: *Cross-cultural competence is the continuous development of knowledge and information from and about individuals and groups that is integrated and transformed into teaching standards, skills, service approaches, techniques, and programs that match the cultural experiences and traditions of learners and that increase both the quality and appropriateness of their dispute resolution skills and the outcomes of disputes.*

There are analytical instruments available for testing the development of cross-cultural competence by organizations such as the Intercultural Communication Institute and by the Government of Canada. These analytical tools can be used to test the cross-cultural or intercultural competence or sensitivity of the trainer and learner as they go through stages of attitudes and behavior related to cultural differences.[124]

Bennett theorizes that there are two worldviews on cultural difference: difference-avoiders and difference seekers. The following stages of attitudes and behavior reflect the worldview of "difference-avoiders:"

- *Denial* of cultural difference–one's own culture is the only real one. Other cultures are avoided. Disinterested

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[123] Miriam E. Delphin & Michael Rowe, *Continuing Education in Cultural Competence for Community Mental Health Practitioners,* 39 PROF. PSYCHOL. RES. & PRAC. 182, 183 (2008).

[124] The Intercultural Communication Institute provides Intercultural Training and Assessment Tools such as "Description, Interpretation and Evaluation" to help participants limit negative evaluation of others while helping develop multiple perspectives. THE INTERCULTURAL COMMUNICATION INSTITUTE, www.intercultural.org (last visited Apr. 7, 2016). Http://www.international.gc.ca/cil-cai/index.aspx?lang=eng is the official website of Global Affairs Canada, Centre for Intercultural Learning, which has a "Country Insights" section that provides brief cultural information on almost all countries in the world (Government of Canada, *Center for Intercultural Learning,* GLOBAL AFFAIRS CANADA (Apr. 7, 2016), http://www.international.gc.ca/cil-cai/index.aspx?lang=eng 2016).

in culture difference but may act aggressively to eliminate difference if it impinges.

- *Defence* against cultural difference–one's own culture is the only good one. The world is "us" and "them." "We" are superior and "they" are inferior. Threatened by cultural difference, so highly critical of other cultures, whether they are host, guest or newcomer.
- *Minimization* of culture difference–one's own cultural worldview is universal. Other cultures may be trivialized or romanticized. Insist on correcting others' behavior to match their expectations.

The stages of attitudes and behaviour reflecting the worldview of the "difference seekers" are:

- *Acceptance* of cultural difference–one's own culture is experienced as just one of a number of equally complex worldviews. Does not mean agreement; cultural difference may be judged negatively. Curious about and respectful toward cultural difference.
- *Adaptation* to cultural difference–the experience of another culture yields perception and behavior appropriate to that culture. Expanded worldview to include perspectives from another culture. Looks at the world through different eyes and may intentionally change behaviour to communicate more effectively in another culture.
- *Integration* of culture difference–experience of different cultural worldviews is incorporated into one's identity. Deal with issues related to their own "cultural marginality." Common among non-dominant minority groups, long-term expatriates, and "global nomads."[125]

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[125] Janet M. Bennett, *Turning Frogs into Interculturalists: A Student-Centered Developmental Approach to Teaching Intercultural Competence*, *in* CROSSING CULTURES: INSIGHTS FROM MASTER TEACHERS 157, 158-161 (Nakiye Avdan Boyacigiller, et al. eds., 2003). An Intercultural Development Inventory was developed by Mitch Hammer and Milton Bennett which generates a valid and reliable profile for intercultural sensitivity and readiness for intercultural learning. M. R. Hammer, M. J. Bennett & R. Wiseman, *Measuring Intercultural Sensitivity: The Intercultural Development Inventory*, 27 INT'L J. INTERCULTURAL RELATIONS 421, 421-23 (2003).

It is not difficult to understand why the more accepting and adaptive attitudes and behaviours of the difference seekers would be more conducive to cross-cultural teaching—especially in teaching DR where culture itself is a major cause of disputes.

D. *Cross-cultural Communication*

An important means of working towards cross-cultural competence is to develop our cross-cultural communication. Reaching across cultures in whatever capacity—but especially as a teacher or trainer— necessitates communication. Communication, as the term is used here, involves expectations, perceptions, choices, actions, and interpretations. Most of the people you meet will be influenced by their own backgrounds, culturally, socially, and personally. When you are in a different country, your background— culturally, as a foreigner, and personally, as you—will influence everything you expect, a great deal of what you do and do not do, and most of how you later think about what has happened. Most of our behavior is outside of our awareness so that 'normal behavior' means behavior according to the norms of our culture and not what is done everywhere or done 'naturally.'[126] Communication includes all kinds of behavior. We cannot separate culture from communication, for as soon as we start to talk about one we are almost inevitably talking about the other, too. But it is possible to distinguish between 'cultural patterns of communication' and 'intercultural' or 'cross-cultural' communication. It is difficult to talk about the encounters of persons from different cultures without also looking at the patterns within each of the cultures.[127]

There are several common and important functions of communication. The functional approach alerts us to potential problems in communication. When something intended as small talk, such as 'stop in and see me whenever you are in the neighborhood,' is taken by a stranger literally to be a genuine request, both parties are embarrassed when the stranger does indeed stop by. Functional communication includes small talk, relating and receiving information, catharsis or tension release, ritual, affective (express emotions towards another person), instrumental (words or gestures are used as instruments to achieve some result). Functional communication is fraught with potential for miscommunication cross-culturally because of differences in values, nonverbal behaviour, language predispositions, and so on. These perspectives remind us of the enormous complexity of communication, even

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[126] CONDON & YOUSEF, *supra* note 109, at 33-34.

[127] *Id.* at 34.

apart from any differences in the cultural backgrounds of those who are communicating.[128]

If communication is the process by which information is passed, different persons are likely to impose different structures on the same process based on different backgrounds, assumptions, and purposes. The mental processes with which we perceive and interpret human behavior make any analysis of interpersonal communication difficult, since we can only guess how another person is thinking and because we are by no means fully aware of how we ourselves are reacting.[129]

To be sensitive to intercultural communication we must have some understanding of at least rudimentary concepts of interpersonal communication, as well as some understanding of some aspects of culture.[130] Intercultural encounters may be interpreted on two levels: *report* or what is said which is largely verbal, and *command* or how it is said which is often nonverbal and often more difficult to describe. While the words of the report may be understood, close attention has to be paid to the command which can animate the meaning with facial expressions, gestures, vocal inflection, *et cetera*.[131]

In intercultural communication, confusions in reference group (nationality, sex, age, and region) identification are very common. [132] Inappropriate reference grouping has long been noted by sociologists, and the chances of misclassifying unfamiliar cultures are even greater than they are for the same culture.[133] Therefore, in interactions across cultures, it is helpful to be aware of differing value orientations, nonverbal patterns, and structures of argument.[134]

Movements across cultures have produced some standardizations of behavior. But it has also made us aware of differences in ways of speaking, reasoning, gesturing and acting—differences which no longer are viewed at a distance. Global travels have underscored the necessity of personal communications among people of varied and varying culture. This problem can be "somewhat diminished if the focus of study is not 'all about other cultures' but rather 'something about our own cultural behavior as sensed

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[128] *Id.* at 20-32.
[129] *Id.* at 10-11.
[130] *Id.* at 5.
[131] *Id.* at 13.
[132] CONDON & YOUSEF, *supra* note 109, at 7.
[133] *Id.* at 9.
[134] *Id.* at 12.

through interaction with some other cultures.'"[135] As a result, the cross-cultural trainer has to be self-aware and introspective. To compound the problem, it is now understood that identity is not fixed but immutable. However, a person has the power to construct their identities in ways that improve teaching and learning by being self-aware, and making conscious decisions about how to act in ways that lead to satisfying outcomes.[136]

To assist in understanding this vital concept, Condon and Yousef analogize intercultural communication as performance where actors are taught to "analyze their audience" and "adapt to your audience."[137] This view of communication as performance is insightful in considering intercultural communication. For one thing, perhaps the most frequent communications across cultures are those of self-conscious performance. A person arriving in another country or welcoming a guest in his own country assumes an extremely predictable role: that of the advisor, the teacher, the student, and perhaps most often, that vague role of 'guest'. Until some routine is established there are probably more little ceremonies—welcoming speeches, orientation meetings, dinner parties and the like, all quite performance centered—enacted across other cultures rather than within our own culture, or at least that might be the appearance to North Americans. Not quite knowing how he is seen in a new culture, the visitor has great difficulty in knowing how to act. And the visitor's background and values are likely to direct even this attempt. Likewise, he does not know how to judge the 'audience reaction'. Cross-culturally, there is difficulty in interpreting the success of performance. North Americans, with their culture of "getting down to business," might dislike status differences, formality, host-guest roles and anything that looks like more rigid systems. This value or value orientation or complex of value orientations is likely to eschew the idea of "performing."[138] It is not appropriate, however, to assume that every North American will fit into this value orientation.

Condon and Yousef theorize that while it is probably not physically and psychologically possible for an outsider to culturally transform herself into someone from another culture, it should not be a bar to cultural communication. "The culture is obviously important intercultural

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[135] Russel R. Windes, *Editor's Foreword* to JOHN C. CONDON & FATHI YOUSEF, AN INTRODUCTION TO INTERCULTURAL COMMUNICATION at vii (1975).

[136] Daniel L. Shapiro, *Identity: More than Meets the "I," in* THE NEGOTIATOR'S FIELDBOOK: THE DESK REFERENCE FOR THE EXPERIENCED NEGOTIATOR 226, 229 (Andrea Kupfer Schneider & Christopher Honeyman, eds., 2006).

[137] CONDON & YOUSEF, *supra* note 109, at 16.

[138] *Id* at 16-18.

communication, but it is the *people*, not cultures, that communicate."[139] To facilitate this intercultural communication, knowing the language of the host might influence how a visitor is perceived. While this might be ideal, Condon and Yousef point out that this could give rise to suspicion or fear that an outsider is intruding on the culture. However, having even excellent facility in a language does not mean that the visitor knows the cultural values and ways of thinking that "give life to a language." Even when fluency is gained in the language, it is as important to be fluent in nonverbal expression which can be as effective or more so in conveying meaning. While gaffes in nonverbal communication can be catastrophic in cross-cultural communication, strangers asking questions about subjects (how much does an item cost; what is your salary) that are not discussed in a culture can cause consternation.[140]

Recognizing that there are differences in cross-cultural communications, it is possible to identify patterns of speech and nonverbal behaviour. The most difficult aspect is to identify value orientations in another culture because "values" is an abstract concept that can be vexing even for those in the same culture. Condon and Yousef suggest the following useful starting points for appreciating differences in cultural values:

(a) Understand your own values;
(b) Be careful not to set up the values of your own culture as standards against which other values seem inferior;
(c) If you must state preference for a culture, be aware that those preferences are related to your own values and that you are being subjective.
(d) Appreciate the difficulties of the stranger trying to adjust away from home;
(e) Clues about strain or confusion should be sensed and dealt with openly;
(f) Sincere concern about another person can help to surmount specific conflicts based on cultural differences;
(g) Adjust to the values and value-related behaviors of the other;
(h) Do not speak about 'value orientations' or other categories because they could be construed as stereotyping.

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[139] *Id.*

[140] *Id* at 250-62.

(i) Remember that communication is between people in a particular relationship and only some value orientations are likely to surface in that relationship.
(j) Recognize that we are not objective in judging our own values because individually we are mostly unaware of the values we live by and the functioning of those values in society.
(k) In lieu of objectivity in comparing values, be humble and cautious in comparing values and in urging changes in other cultures.[141]

Being fallible human beings, even the most astute trainer will commit a *faux pas* that will result in misunderstanding. Most problems of misunderstanding in intercultural communication—especially if the misunderstanding lies in conflicts of values—occur at a level that is undramatic and complicated. To analyze such incidents and to anticipate potential problems in an effort to avoid them or cope with them as they occur, we must become sensitive to some of the cultural influences in communication which, in our own society, we take for granted. We must call into awareness much of what we usually ignore, and must begin to think in terms that may be totally new by contemplating four themes: (1) cultural values, (2) nonverbal behavior, (3) language behavior, and (4) patterns of reasoning and rhetorical expression. This will encourage us to do the following: seek the deep structures of culture rather than the surface meaning; be interested in what is reflected within the form and not in the form itself; be interested in value of status differentiation, values of nature's superiority over man or in fatalism than in specific prayers, rituals, or responses to technology; and seek underlying principles as categories both for distinguishing cultures and for finding common places among cultures.

DR trainers should heed Goh's words of caution regarding our underlying assumptions: Our perception of people and events and things is, in turn, influenced by our underlying assumptions and habits, and frames our reality. It is all the more important that we cultivate an awareness of different rules on communication and behaviour crucial to a successful untangling of the cross-cultural web.[142]

In short, the dispute resolution teacher who strives to convey meaning across cultures must know himself or herself and respond empathetically and

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[141] *Id* at 263.

[142] Bee Chen Goh, *Typical Errors of Westerners*, *in* THE NEGOTIATOR'S FIELDBOOK: THE DESK REFERENCE FOR THE EXPERIENCED NEGOTIATOR 295 (Andrea Kupfer Schneider & Christopher Honeyman, eds., 2006).

respectfully to students of different value orientations—that is, practice mindfulness.

E. *Mindfulness*

Riskin describes "mindfulness" as being aware, moment to moment, without judgment, of one's bodily sensations, thoughts, emotions, and consciousness. It is a systematic strategy for paying attention and for investigating one's own mind — a skill that one cultivates through meditation and then deploys in daily life. Riskin cites Daniel Goleman, a psychologist, for the proposition that mindfulness meditation can help to develop emotional intelligence which includes self-awareness, self-regulation, motivation, empathy and social skills. Mindfulness can help in several ways. As mentioned, it provides methods for calming the mind; concentrating; experiencing compassion and empathy; and achieving an awareness of, and 'distance' from, thoughts, emotions, and habitual impulses that can interfere with making good judgments, building rapport and motivating others.[143]

Sadri and Flammia linked mindfulness, intercultural and international communication to arrive at a definition which ADR trainers can adopt:

> We define mindful intercultural and international communications as interactions with members of other cultures in which an individual strives to understand the cultural values, beliefs, and norms of other parties and to use that understanding to adapt his/her communication style to achieve a meaningful exchange and a win-win result.[144]

Ting-Toomey, speaking specifically to teaching, also indicates that mindfulness plays an important role in managing difference in intercultural conflicts. This means paying full attention to an interaction during an intercultural encounter without imposing your own evaluative lens on a cultural stranger's behaviour. At the same time, in order to communicate mindfully, we must pay close intra-personal attention to our own reactive emotions, cognitions, behaviours and cultural lens that we display in the conflict scene. "Mindful" conflict management requires us to be sensitive to the differences and similarities in conflict encounters between diverse cultural

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[143] Leonard L. Riskin, *Knowing Yourself: Mindfulness*, *in* THE NEGOTIATOR'S FIELDBOOK: THE DESK REFERENCE FOR THE EXPERIENCED NEGOTIATOR 241-42 (Andrea Kupfer Schneider & Christopher Honeyman, eds., 2006)

[144] Houman A. Sadri and Madelyn Flammia, INTERCULTURAL COMMUNICATION: A NEW APPROACH TO INTERNATIONAL RELATIONS AND GLOBAL CHALLENGES 26 (2010).

groups. It demands that we be aware of our own ethnocentric biases and be ready to move from ethnocentric thinking to viewing through an ethno-relative lens. It encourages us to increase our alertness to our own and others' mindless behaviours. It propels us to understand more deeply the cultural logic that guides our own and others' conflict behaviours.[145]

In short, mindful DR trainers must always be alert to their own thoughts, emotions and biases; be aware of the learner's cultural values, beliefs and norms; and be culturally competent enough to adapt their own communication without imposing their worldview on the learner.

VII. TEACHING CULTURALLY DIVERSE ADULT DISPUTE RESOLUTION LEARNERS

DR students are usually adult learners:

> Before a teacher can know what she needs to teach, she has to know the people she is teaching. Students, and especially adult students, are not blank slates. Without taking the time to figure out what beliefs and (mis)understandings students bring to the task of learning, what the teacher offers may be only of superficial and fleeting value."[146]

Since the late 1970s, North American teachers and trainers of dispute resolution have been travelling abroad to teach.[147] With the earlier exploration of value orientations, worldviews, cross-cultural communication and cultural differences and the damage that can be done, teaching across cultures is a daunting task. Abramson voiced a criticism that has been levelled at some of these "traveling trainers as cultural imperialists, promoting the U.S. way of doing things, without any meaningful effort to respect or account for cultural differences." To avoid these charges, he suggests that trainers must meticulously adapt their materials and presentations for export, based on the cultural assumptions embedded in the off-the-shelf programs and the cultural upbringings of the participants and suggested seven guidelines for U.S.

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[145] Stella Ting-Toomey, *Teaching Mindful Intercultural Conflict Management in* CROSSING CULTURES: INSIGHTS FROM MASTER TEACHERS 254-63 (Nakiye Avdan Boyacigiller, et al. eds., 2003).

[146] Melissa Nelken, Bobbi McAdoo and Melissa Manwaring, *Negotiating Learning Environments, in* RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE 201 (Christopher Honeyman, et al. eds., 2009).

[147] Menkel-Meadow, *supra* note 7, at 5.

trainers teaching and training abroad.[148] Abramson's analysis and guidelines have much to commend them but they should also be applied to the multicultural reality of North American training programs. To elucidate the reasons, we must delve deeper into the theories of andragogy and cross-cultural training, experiential learning, learning styles and the need to establish inclusion.

A. *Andragogy—Teaching Diverse Adult Learners*

Students in dispute resolution training are usually adult learners. Unlike child learners, adult learners benefit from different learning techniques. Knowles coined this theory "andragogy," the art and science of helping adults to learn, and set out four assumptions as the underpinning of his theory:

1. As a person matures self-concept moves from dependency towards self-direction;
2. Maturity brings an accumulating reservoir of experience that becomes an increasing resource of learning;
3. As the person matures, readiness to learn is increasingly oriented towards the person's social roles;
4. As a person matures, the orientation towards learning becomes less subject-centered and increasingly problem-centered.[149]

Other theorists have developed and broadened this list and the concept.[150]

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[148] Harold Abramson, *Outward Bound to Other Cultures: Seven Guidelines, in* RETHINKING NEGOTIATION TEACHING: INNOVATIONS FOR CONTEXT AND CULTURE 293-94 (Christopher Honeyman, et al. eds., 2009) (Providing seven guidelines including (1) Acquire a culturally educated lens; (2) Behave like a guest: be flexible, open-minded, and elicitive; (3) Be mindful of cultural assumptions and differences and adapt training; (4) Educate participants about training techniques; (5) Adjust presentation when English is not the first language of the participants; (6) Refashion materials and presentation based on purpose(s) of training; and (7) Plan to evaluate the training program).

[149] M. S. Knowles, THE MODERN PRACTICE OF ADULT EDUCATION: ANDRAGOGY VERSUS PEDAGOGY (1970).

[150] J. Mezirow, *A Critical Theory of Adult Learning and Education, in* ADULT LEARNING AND EDUCATION 136 (M. Tight ed., 1983). (Proposing a charter for "andragogy" as follows: 1. Progressively decrease the learner's dependency on the educator; 2. Help the learner to understand how to use learning resources—especially experience of others, including the educator; and how to engage others in reciprocal learning relationships; 3. Assist the learner to define his/her learning needs—both in terms of immediate awareness and of understanding the cultural and psychological assumptions influencing his/her

There is much debate about the appropriate definition of andragogy[151] but the four assumptions are referred to here to begin the discussion for the inclusion of "culture" in dispute resolution training. As Ginsberg contends, "to use intrinsically motivating instruction requires an understanding of learners' perspectives and prior knowledge. Their responses to learning activities reflect their cultural backgrounds. Social scientists today regard the cognitive processes as inherently cultural."[152]

Being socialized and living in the dominant culture often lessens awareness that beliefs and behaviours reflect a particular racial group, ethnic heritage, sexual orientation, or gender affiliation. A dominant group can so successfully project its way of seeing social reality that its view is accepted as common sense, as part of the natural order, even by those who are disempowered or marginalized by it. In fact, for some, it may feel like heresy to acknowledge that Anglo-Americans and dominant Western norms enjoy a position of privilege and power that has diminished other norms as valuable as cooperation (versus competition) and interdependence (versus independence).[153] As a result, Ginsberg and Wodkowski championed the importance of acknowledging diversity in the learning environment:

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perceptions of needs; 4. Assist learners to assume increasing responsibility for defining their learning objectives, planning their own learning programme and evaluating their progress; 5. Organize what is to be learned in relationship to his/her current personal problems, concerns and levels of understanding; 6. Foster learner decision making/select learner-relevant learning experiences which require choosing, expand the learner's range of options, facilitate taking the perspectives of others who have alternative ways of understanding; 7. Encourage the use of criteria for judging which are increasingly inclusive and differentiating in awareness, self-reflective and integrative of experience; 8. Foster a self-corrective reflexive approach to learning—to typifying and labelling, to perspective taking and choosing, and to habits of learning and learning relationships; 9. Facilitate problem posing and problem solving, including problems associated with the implementation of individual and collective action; recognition of relationships between personal problems and public issues; 10. Reinforce the self-concept of the learner as a learner and doer by providing for progressive mastery; a supportive climate with feedback to encourage provisional efforts to change and to take risks; avoidance of competitive judgment of performance; appropriate use of mutual support groups; 11. Emphasize experiential, participative and projective instructional methods; appropriate use of modelling and learning contracts; 12. Make the moral distinction between helping the learner understand his/her full range of choices and how to improve the quality of choosing vs. encouraging the learner to make a specific choice).

[151] Joseph Davenport, *Is There Any Way Out of the Andragogy Morass?, in* CULTURE AND PROCESSES OF ADULT LEARNING 108 (Mary Thorpe, et al., eds., 1992).

[152] Margery B. Ginsberg & Raymond Wodkowski, DIVERSITY AND MOTIVATION: CULTURALLY RESPONSIVE TEACHING IN COLLEGE (2009) at xii.

[153] *Id.* at 6.

> Applied to a learning situation, diversity conveys a need to respect similarities and differences among human beings and to move beyond simply developing sensitivity to active and effective responsiveness. This requires constructive action to change ideas and attitudes that perpetuate the exclusion of underserved groups of students and significantly challenge their motivation to learn.[154]

However, people often identify with representations that they are either comfortable with or that help deepen their understanding of themselves.[155] In the case of societies that have been oppressed, Brazilian academic Freire proposed dialogical pedagogy to deal with the consciousness of the oppressed and the oppressor.[156] He indicated that the pedagogy must take into account their behavior, their view of the world, and their ethics.[157] In his view, "dialogue" (mirroring the earlier discussion of "communication") is a way of knowing and should never be viewed as a mere tactic to involve students in a particular task. He engaged in dialogue because he recognized the social and not merely the individualistic character of the process of knowing. In this sense, dialogue presents itself as an indispensable component of the process of both learning and knowing.[158]

Ginsberg and Wodkowski made the point that when we meet others whose family or community norms vary from our own, it is akin to holding up a mirror, provoking questions we might not otherwise think to ask. Contrast and dissonance can be disturbing in spite of the opportunity they present to examine assumptions, making it possible to more deeply understand who we are in relation to one another.[159] Discussing culture, stereotyping and diversity, they asserted that, "As teachers, being aware of our own beliefs and biases and being open to the meaning that is created through authentic interactions with diverse students is fundamental. Without such awareness, stereotypes and biases that reside within learning environments become agents of historic patterns of marginalization."[160]

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[154] *Id.* at 11.

[155] Donaldo Macedo, *Introduction, in* PEDAGOGY OF THE OPPRESSED 23 (Palo Freire ed., Myra Bergman Ramos trans., 1970).

[156] *Id.*

[157] *Id.* at 55.

[158] Paulo Freire & Donaldo Macedo, *A Dialogue: Culture, Language and Race*, 65 HARV. EDUCATIONAL REV. 377, 379 (1995).

[159] GINSBERG & WODKOWSKI, *supra* note 151, at 9.

[160] *Id.*

They warned that, unless educators understand their own culturally mediated values and biases, they may be misguided in believing that they are encouraging divergent points of view and providing meaningful opportunities for learning to occur when they are in fact repackaging or disguising past dogmas. It is entirely possible to believe in the need for change and therefore learn new languages and techniques, and yet overlay new ideas with old biases and frames of reference. It is possible to diminish the potential and the needs of others at the most subconscious levels and in the most implicit ways without any awareness of doing so. Mindfulness of who they are and what they believe culturally can help them to examine the ways in which they may be unknowingly placing their good intentions with a dominant and unyielding framework—in spite of the appearance of openness and receptivity to enhancing motivation to learn among all students.[161]

Proposing diversity as strength, Prashing indicates it is important that human beings know who they are by developing self-knowledge which in turn facilitates understanding of people we have to interact with. Only by knowing ourselves first will we ever be capable of really understanding others and less prone to misinterpret their communication or actions and misjudge their behaviour. With better insights into our own and other people's brain processes it might be possible to utilize our brain power much better, and live in greater harmony not only with ourselves but, more importantly, with the people around us. We can do this with scientific tools for finding out style differences, and through psychological tests which give detailed insight into various aspects of human behaviour, thinking and personal preferences.[162] Ginsberg and Wodkowski provide a helpful list that was created by Linda Marchesani on how to provide written feedback to promote diversity and respond to bias in students in a multicultural classroom.[163]

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[161] *Id.* at 12-13.

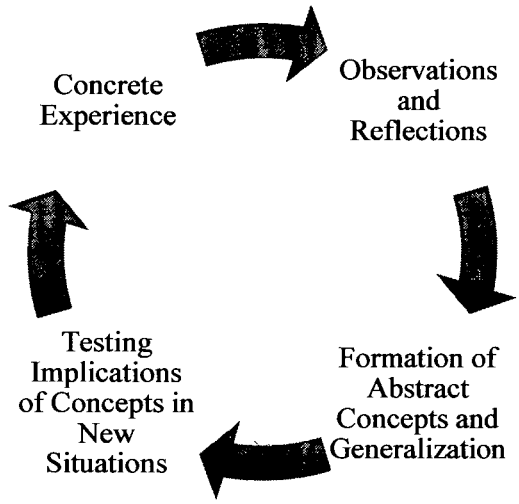
[162] BARBARA PRASHNIG, THE POWER OF DIVERSITY: NEW WAYS OF LEARNING AND TEACHING THROUGH LEARNING STYLES 11 (3rd ed. 2008).

[163] GINSBERG & WODKOWSKI *supra* note 151, at 394 (stating: 1. Ask for concrete examples, clarifications, illustrations and details. 2. Provide additional information that corrects misinformation or fills in missing information. 3. Ask about feelings associated with a situation. If they have described feeling a certain way, ask more about the situation that prompted those feelings. 4. Inquire about how students act on their beliefs. 5. Provide students with different perspectives—other ways of looking at the same situation—and invite them to try on a different perspective. 6. Provide students with a broader context (historical or global) with which to think about issues. 7. Point out the 'loops' in their thinking (changing their views from one statement to the next). 8. Paraphrase your understanding of the intent of their remarks, and ask if you are understanding their intentions and arguments correctly. 9. Support indications of new awareness, growth, and risk-taking behavior. 10. Provide suggestions for how to take the next step and explore

B. *Experiential Learning*

With dispute resolution students coming from diverse backgrounds and various levels of academic achievement, one method of teaching that can be useful is Kolb's Experiential Learning Model which advocates active learning and provides a theoretical framework for selecting and organizing learning activities that could be helpful for learning across cultures.

FIGURE 2: KOLB'S EXPERIENTIAL LEARNING MODEL



Source: D. M. Smith and D. Kolb as produced in Ginsberg at 170. [164]

The emphasis is placed on the process of learning as opposed to the behavioural outcomes. In experiential learning theory, "ideas are not fixed and immutable elements of thought but are formed and re-formed through experience."[165] As Smith and Kolb indicated, learners enter the learning environment with beliefs. The educator's task is not only to implant new ideas

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topics further by suggesting books, resources, films, and cultural events. 11. Acknowledge the emotional aspects of dealing with these issues. 12. Introduce students to concepts that can help them make sense of their personal experience. 13. Affirm students' willingness to engage with issues. 14. Share examples of your own experience with students. 15. Let them know you have been there too!).

[164] DONNA M. SMITH & DAVID A. KOLB, USER'S GUIDE FOR THE LEARNING STYLES INVENTORY: A MANUAL FOR TEACHERS AND TRAINERS 143 (1st ed. 1986).

[165] *Id.*

but also to dispose of or modify old ones. Resistance to new ideas stems from their conflict with old beliefs that are inconsistent. They suggested:

> If the education process begins by bringing out the learner's beliefs and theories, examining and testing them, and then integrating the new more refined ideas into the person's belief systems, the learning process will be facilitated.... Ideas that evolve through integration tend to become highly stable parts of the person's conception of the world. On the other hand, when the concept changes by means of substitution, there is always a possibility of a reversion to the earlier level of conceptualization and understanding, or to a dual theory of the world where espoused theories learned through substitution are incongruent with theories-in-use that are more integrated with the person's total conceptual and attitudinal view of the world.[166]

As discussed earlier, this can be especially true in cross-cultural training where students and trainers can come to the learning environment with beliefs which can be premised on stereotypes. These beliefs and ideas have to be confronted in order for new learning to take place. In Kolb's Experiential Learning Model, the learner needs four different types of abilities to be effective:

1. *Concrete experience*–they must be able to involve themselves fully, openly, and without bias in new experiences.
2. *Reflective observation*–they must be able to reflect on and observe their experiences from many perspectives;
3. *Abstract conceptualization*–they must be able to create concepts that integrate their observations into logically sound theories; and
4. *Active experimentation*–they must be able to use these theories to make decisions and solve problems.

In Kolb's view, experiential learning is a holistic, adaptive and cyclical process during which the learner moves from actor to observer, and from specific involvement to general analytic detachment. In short, learning is the process whereby knowledge is created through transformation of experience.[167] To create a complete cycle for dispute resolution, the diagram

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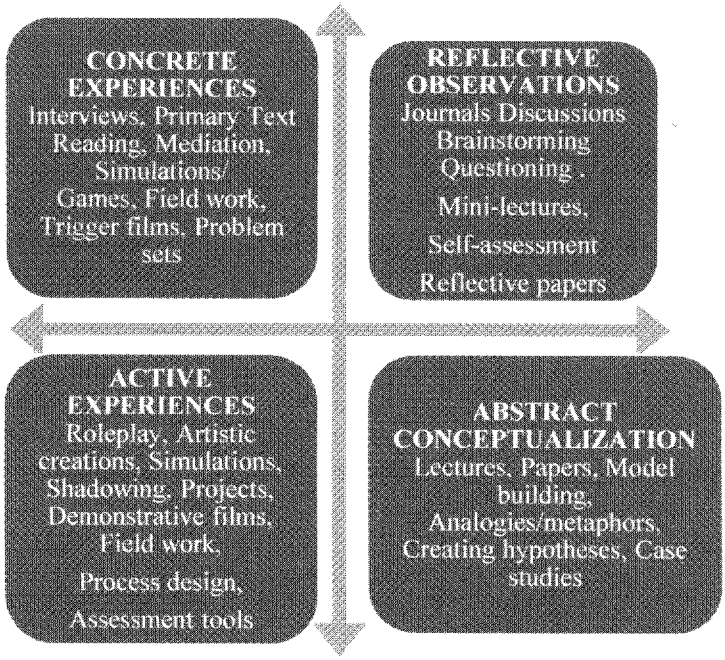
[166] *Id.* at 144-46.
[167] *Id.* at 148-55.

below shows how teachers and learners generate activities in each of the four dimensions:

FIGURE 3: SAMPLE DR EXPERIENTIAL LEARNING ACTIVITIES FOR DIMENSIONS IN THE KOLB MODEL

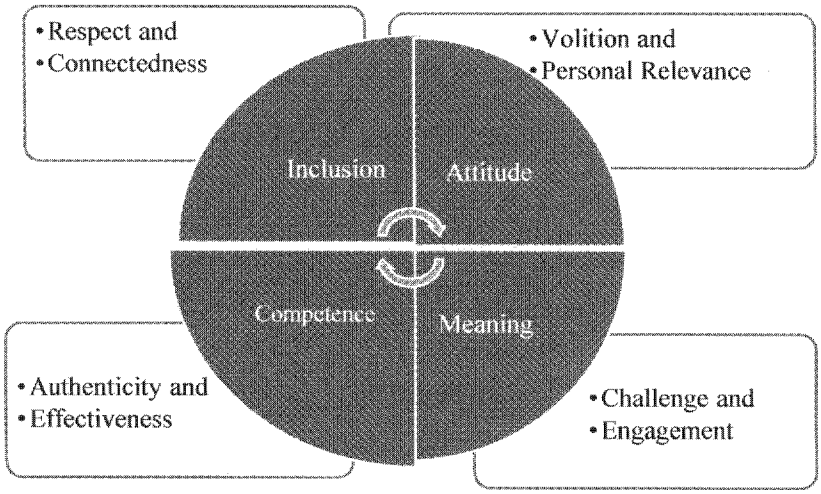


Source: Kolb Model adapted by Svinicki and Dixon.[168]

To create a learning environment in a motivational framework, Ginsberg theorized that the teaching must establish inclusion, develop a positive attitude, enhance meaning and engender competence. The following example illustrates Ginsberg's four pillars of a learning environment in a motivational framework.

[168] Marilla D. Svinicki & Nancy M. Dixon, *The Kolb Model Modified for Classroom Activities*, 35 COLLEGE TEACHING 141, 142-44 (1987).

FIGURE 4: MOTIVATIONAL FRAMEWORK FOR LEARNING ENVIRONMENT



Source: Copyright© 2004 by Margery B. Ginsberg at 385[169]

C. *Establish Inclusion*

A learner who feels excluded in the learning environment will likely disengage from the learning process. If a learner does not feel included, their learning is likely to be impeded. To establish inclusion, a trainer can utilize Ginsberg's checklist as a guide.[170]

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[169] GINSBERG & WODKOWSKI, *supra* note 151, at 123.

[170] *See id.* at 124.

Routines and norms are apparent, and the students understand them:

- Routines and norms are in place to help everyone feel that they belong in the class.
- Students have opportunities to learn about each other.
- Students and instructors have opportunities to learn about others' unique backgrounds.
- Participation agreements and guidelines are negotiated.
- Everyone understands the system of personal and collective responsibility for agreements.

All participants equitably and actively participate and interact:

- The instructor directs attention equitably.
- The instructor interacts respectfully with all learners.
- The instructor demonstrates to all learners that she or he cares about them.

King and Swartz also stress the importance of inclusion of content in which cultures and groups are present in more than token ways.[171] When these practices are put into place, the teaching will become more culturally responsive.

TABLE 5: COMPARISON OF CONVENTIONAL TEACHING AND CULTURALLY RESPONSIVE TEACHING

Key Elements	**Conventional Teaching**	**Culturally Responsive Teaching**
Source of knowledge and skill	Simple, one way, from teacher to learners or textbook to learners. Perceived value is teacher centered.	Complex, teacher-learner interactive, allowing individual search and reflection—frequently with integrated subject matter. Perceived value is amalgam of teacher and learner preferences.
Dominant Perspective	Teacher determined	Learning content inclusive of relevant learner experience and diversity.
Learning environment organization	Hierarchical and linear. Teacher directed. Competitive	Complex. Thematic, integrative, cooperative, open, and individualized. Teacher-learner controlled.
Preferred outcomes	Specified and convergent. Emphasis on memorized vocabulary, concepts, and	Complex. Emphasis on understanding and competence, as well as reorganization of knowledge and skills in unique ways. Both

- Students share ideas and perspectives with each other and the instructor (this includes peer participation in a range of peer interactions).
- Students know what to do, especially when making choices.
- Students assist each other.

[171] JOYCE E. KING & ELLEN E. SWARTZ, "RE-MEMBERING" HISTORY IN STUDENT AND TEACHER LEARNING: AN AFROCENTRIC CULTURALLY INFORMED PRAXIS 39 (1st ed., 2014).

Key Elements	Conventional Teaching	Culturally Responsive Teaching
	skills. Ability-oriented performance	predictable and unpredictable outcomes. Divergent and convergent thinking. Learning demonstrated in varied and relevant contexts. Authentic application-based goals.

Source: Ginsberg and Wodkowski at 142

D. *Learning Styles*

The DR teacher must also be cognizant of his or her own and students' learning styles in the learning environment. Learning styles use different parts of our brains. They guide the way we learn, change the way we internally represent experiences, the way we recall information, and even the words we choose.[172] The concept of learning styles is constructed and applied in educational contexts to explain personal preferences and differences in learning. It tends to emphasize the relationship of the learner to the learning situation as opposed to how people perceive, remember, and organize information.

[172] Memletics Learning Style (9 November 2015), online: http://www.learning-styles-online.com/overview_(Memletics Learning Style, 2015). *See also* Raymond Felder & Barbara Soloman, *Learning Styles and Strategies* (Oct. 2015), http://www.engr.nscu.edu/learningstyles. (1) Active learners tend to retain and understand information best by doing something active with it, like discussing or applying it or explaining it to others. Reflective learners prefer to think about it quietly first. (2) Sensing learners tend to like learning facts. Intuitive learners often prefer discovering possibilities and relationships. (3) Visual learners remember best what they see—pictures, diagrams, flow charts, time lines, films, and demonstrations. Verbal learners get more out of words—written and spoken explanations. (4) Sequential learners tend to gain understanding in linear steps, with each step following logically from the previous one. Global learners tend to learn in large jumps, absorbing material almost randomly without seeing connections and then suddenly "getting it."

TABLE 6: DUNN & DUNN LEARNING STYLE MODEL: BASIC FUNCTIONS OF THE BRAIN

LEFT HEMISPHERE (Analytic)	RIGHT HEMISPHERE (Holistic)
Analytic–breaks down into details and component parts. No concern of interest for the whole	*Overview*– sees the whole big picture. Correlates entire situation. Does not look at details. Synthesizes
Focuses–focuses attention on the fine detail. Zeroes in on a small area of activity	*Diffuse*–spreads out over a large area. Not concentrated in one place.
Serial–Piece by piece sequential. Auditory, logic. Language. Mathematics	*Simultaneous*–spatial relations, visual, rhythm and flow. Music. Managerial. Multi-operational.
Try–conscious control and effort. Ego. Expressive. Struggle	*Reflex*–survival instinct. Impulse. Unconscious. Receptive.
Breaking Down–figuring things out step-by-step and part by part	*Synthetic*–putting things together to form wholes
Temporal–Keeping track of time, sequencing one thing after another.	*Non-temporal*–without a sense of time.
Logical–drawing conclusions based on logic one thing following another in logical order—for example, a mathematical theorem or well-stated article	*Intuitive*–making leaps of insight, often based on incomplete patterns, hunches, feelings or visual images.

Source: Barbara Prashing [173]

Since students have different histories, adaptive approaches to reality, and socialization practices, they are likely to differ in their characteristic ways of approaching learning. What has been valuable and valid communication processes in a cultural domain may be perceived as deficient in another. A culturally based learning style orientation helps the teacher to realize that these differences are not deficits. Understanding that there are cultural differences in how students may prefer to learn can help teachers acknowledge their own

[173] PRASHNIG, *supra* note 161, at 14-16.

teaching style preferences and to plan creatively for curricular activities that are more congruent as well as challenging to a variety of students.[174]

Adapting Tennant's argument to the cross-cultural DR training, trainers can analyse the psychological 'worldview' they adopt when interpreting actions and events in the learning environment. This is where critical understanding of competing psychological theories is important, which means analysing the conceptual weaknesses and contradictions within each theory, evaluating whether each theory is supported by evidence, assessing the success of the practices promoted by each theory, and finally being aware of the social, historical and political origins and impact of each theory. By scrutinizing their psychological 'worldviews', trainers are better able to recognize and appreciate the worldviews of others and they are in a better position to articulate their goals and purposes as adult educators. This does not mean that adult educators should adopt a chameleon-like character, shifting colours as the environmental circumstances dictate—it only means that they should be aware of their 'worldview' and understand its limitations and the context of the alternatives available. Keeping in mind the pervasiveness of change and uncertainty in contemporary life, the trainer needs to adopt lifelong learning which requires the capacity to develop and sustain reflexivity, broadly conceived as critical awareness of the assumptions that underlie practice. This will entail an "enhanced capacity for communities and individuals to engage with, rather than simply to react or adapt to, contemporary uncertainties and dislocations."[175]

Bauman's suggestions to ensure that mediator power is not asserted 'over' parties are adapted here as helpful tips so that the trainer power is not asserted over learners in cross-cultural training. Technicality must be accompanied by trainer susceptibility to the world of the learner. Susceptibility is located in having rapport and empathy with learners, providing them with support, and having their respect and appreciation. In other words, training across culture relies on a 'relational-affective' capacity in which the selves of the trainer and of the learners 'participate in and are vulnerable to each other'. Both susceptibility and technicality challenge dominant 'Western' views about the need for a separation of process and content in teaching. Technicality requires significant knowledge of context in order for the trainer to be able to understand what is being said. A critical aspect of mediator capacity thus lies in the non-stereotypical application of cultural information to diverse local

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[174] GINSBERG & WODKOWSKI, *supra* note 151, at 168.

[175] MARK TENNANT, PSYCHOLOGY AND ADULT LEARNING 140-41 (3rd ed. 2006).

situations and to divergent, multi-positioned and shifting learner subjectivities, allegiances and multiple modes of being.[176]

In the end, trainers in dispute resolution must know themselves, have deep knowledge of the conflict resolution techniques, culture, cultural communications, and be mindful. For the reasons discussed above, the teacher who is brave enough to teach dispute resolution must be a highly skilled facilitator and would find Rogers' guidelines helpful in teaching across cultures and worldviews.[177]

Even though the guidelines were not developed specifically for the teaching of dispute resolution, they provide an excellent resource on how to facilitate the learning of individuals from diverse cultural backgrounds. The caution is that there will likely be a variety of learning styles in each group with some learners preferring the "teacher as expert" dynamic which allows the learner to play a lesser role in their learning. While the teacher has an obligation to ensure that the core curriculum is learned, it is also the teacher's role to ensure that there is an atmosphere of trust and confidence within which the learners are free to exercise independent judgment and pursue their interests.[178]

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[176] Toni Bauman, *Speaking Across Difference: Native Title Mediation and Peacebuilding in Australia, in* MEDIATION IN THE ASIA-PACIFIC REGION 51, 51-70 (Dale Bagshaw & Elisabeth Porter eds., 2009).

[177] David Boud, *Toward Student Responsibility for Learning, in* DEVELOPING STUDENT AUTONOMY IN LEARNING 21, 36 (1981), summarising CARL R. ROGERS, FREEDOM TO LEARN: A VIEW OF WHAT EDUCATION MIGHT BECOME 164-166 (1st ed. 1969). 1. The facilitator has much to do with setting the initial mood or climate of the group or class experience. 2. The facilitator helps to elicit and clarify the purposes of the individuals in the class as well as the more general purposes of the group. 3. The facilitator relies on the desire of each student to implement those purposes which have meaning for him, as the motivational force behind significant learning. 4. The facilitator endeavours to organize and make easily available the widest possible range of resources for learning. 5. He regards himself to be a flexible resource to be utilized by the group. 6. In responding to expressions in the classroom group, the facilitator accepts both the intellectual content and the emotionalized attitudes, endeavouring to give each aspect the approximate degree of emphasis which it has for the individual or the group. 7. As the acceptant classroom climate becomes established, the facilitator is able increasingly to become a participant learner, a member of the group, expressing her views as those of one individual only. 8. The facilitator takes the initiative in sharing herself with the group—her feelings as well as her thoughts—in ways which do not demand or impose, but represent simply a personal sharing which students may take or leave. 9. Throughout the classroom experience, the facilitator remains alert to the expressions indicative of deep or strong feelings. 10. In his functioning as a facilitator of learning, the leader endeavours to recognize and accept his own limitations.

[178] J. P. Powell, *Reducing Teacher Control, in* TOWARD STUDENT RESPONSIBILITY FOR LEARNING 71, 80 (David Boud ed., 1981).

VIII. CONCLUSION

North Americans adopted the Kpelle moot as an alternate to our Eurocentric pugilistic ways of settling disputes. What we have learned, however, is that culture often causes disputes. As the literature has shown, culture is a highly complex concept and numerous attempts have been made to define it. Whether it is referred to as culture or worldview, it is central to how individuals perceive themselves and the world, it is how they interpret and respond to events, it influences cognition and behaviour, and is at the core of how conflicts arise and are resolved. Therefore, teachers of dispute resolution who do not have in-depth understanding of culture—their own and that of their students—may ignore or diminish the centrality of culture in the learning environment. Unfortunately, they could resort to stereotypes which are associated with psychological damage, impediments to learning, engender distrust between learner and trainer, and could lead to charges of imperialism or worse. With globalization and multiculturalism at home, it is therefore vital that every teacher of dispute resolution learn how to teach across cultures by striving towards cultural competence, understanding value orientations, power distance, and how to communicate across cultures. Since DR learners are usually adults, it is also essential that DR teachers have grounding in andragogy, experiential learning, and learning styles. To accomplish this monumental task, DR teachers must not only know themselves, they must change their global mindset, be culturally mindful, and be ready to confront their own values and methods of teaching. They must continuously revise and change theory and practice so that they are not a *fait accompli*, but dynamic movement in which both theory and practice make and remake themselves. They must be constantly open to criticism and sustain curiosity, always ready for revision based on the results of their own experience and that of others.[179] By expanding their own worldview and infusing their theory and practice with culture and diversity, DR teachers can assist learners to communicate across cultures, expand their worldviews, develop mindfulness, and cultivate the empathetic global mindset required to settle disputes.

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[179] PAULO FREIRE, THE POLITICS OF EDUCATION: CULTURE, POWER AND LIBERATION, 11 (Donaldo Macedo trans., 1985).